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PART XXX, *July*, 1865.

I.—*On the Patent Laws of the United Kingdom.* By John Lowry Whittle, Esq., Barrister-at-law.

[Read Tuesday, 17th of January, 1865.]

Our system of Patent Law has lately attracted much attention. Within a few years there have been several parliamentary commissions to investigate its principles; and the utility of such a system is one of the acknowledged social science questions in the sister kingdom. Here, it is true, patent law is not a matter of so much importance; yet in some parts of Ireland, I am happy to say, inventive talent is at work; and in the north, for instance, the question is regarded with continually increasing interest. I therefore thought it would not be an unreasonable occupation of the time of this Society to review the working of the system. We are perhaps the better qualified to discuss it on its own merits, as we are not led away by the powerful interests which surround this question in England.

Our present Patent Law derives its origin from an old statute, the 21st of Jac. I. This asserted the royal prerogative to grant monopolies in certain cases in favour of the "first and true inventor" of any mechanical or chemical combination, process, or new manufacture.

This statute, with some trifling additions, constituted our patent law for more than two centuries. In the year 1852, upon the report of a committee of the previous session, was passed the "Patent Law Amendment Act, 1852," which remains the law at the present day. The principal object of this Act was to cheapen the cost of obtaining patents, and in other ways to encourage the taking them out. This Act also abolished Irish patents, making one patent suffice for the United Kingdom. But it was in fact a mere administrative measure, adopting without the slightest modification

the principle of the Act of James. It is in that Act therefore that we are to seek the principle of the English Patent Law. The idea of its framers was to induce the inventor to disclose his invention for the public good, and in return for the disclosure to secure him during a certain number of years as great a monopoly of his invention as if he had kept it a secret. The effect of this statute may be stated roundly thus :—Anyone claiming to be the originator of any mechanical or chemical combination may, on presenting to the Patent Office a full detailed statement of such mechanical or chemical combination, prevent anyone else during the space of fourteen years from making use of such combination or process, without first obtaining the permission of the originator or his representative. All persons who choose to make use of this combination or process are obliged to purchase the consent of the patentee. A contract is made between the crown (or the public) and the patentee for their mutual benefit. The inventor is thus empowered to sell the use of his invention at any price he thinks it will fetch ; while the public provide by the specification that the invention shall not perish with the inventor. It is well known that in all manufacturing countries many valuable processes have from time to time been lost by the death of the inventors or their immediate descendants, and to remedy this evil was the principal object of the Act of James. In former times the isolation of our various manufacturing districts, and the small number of hands employed in each establishment made it a much easier matter than it is at present to keep such secrets. And *then* the patent system perhaps afforded the only chance of preserving new discoveries to posterity. Yet it had little effect till within the last century. It is to this period that belong most of the patents previous to 1852.

A system which seems to benefit the community in general, and at the same time to reward individual talent, claims much consideration ; and this was regarded by many as a solitary instance, wherein the light of our future commercial intelligence penetrated an age otherwise remarkably ignorant of social and trading principles. Accordingly the principle of the earlier law was re-affirmed in 1852. Yet some doubted its soundness, and the greater extension given to it in 1852 has only further developed its anomalies. The number of patents taken out between 1624 and 1850 was 14,300, but between 1852 and 1862 the number was over 21,000; thus within ten years exceeding by one-third the patents of the previous two hundred and twenty-six years.*

That the actual patent system has broken down is admitted on all hands. The law is found to have created a kind of property which peculiarly demands its protection from invasion, and which its present machinery is totally incompetent to protect ; and the advocates of patent rights propose new courts and a new system of judicature specially to protect these creatures of statute. The recent Royal Commission, while maintaining the propriety of a patent law, recommends that one of the judges should sit for the

* The exact figures for 9 years and 3 months after the Act of 1852, are 19,179 patents issued. *Report* 1865, p. 159.

trial of patent cases exclusively; that he should be assisted by scientific assessors; should sit without a jury, unless the parties desire a jury; and, when sitting without a jury, should decide questions of facts as well as of law. Again, the very cheapness of obtaining a patent encourages all sorts of useless patents to protect inchoate ideas never farther developed. This class of patents embarrasses the real inventor, and discourages him from many useful courses of experiments. Many of these patents, too, are not taken out merely from ignorance, but for the purpose of advertising particular houses in trade. Again, patent law not being universal among other nations, many with whom free trade has connected us are without these laws. The English manufacturer is then in this position. He has to pay a large per centage to the patentee; while his rival in Switzerland, for instance, manufacturing under this very patent, pays nothing, and is able to sell in the English market goods so manufactured at a proportionate reduction in price. To explain the first of these objections, namely, litigation, I must enter into some details.

The first step of the intending patentee is to register a petition at the Patent Office in London. This must be accompanied by what is called the provisional specification, setting out what the process or combination is, and the various objects to which it can be applied. Within six months he lodges his final specification, which is a more full and detailed statement of the same particulars. He then obtains a patent for three years. This is the second stage; and so far he has paid in fees to the Patent Office £30; that is to say, £5 on registering his petition, and £25 on obtaining his patent. If at the end of three years the patent has escaped the dangers of the law courts, he may extend it for four years more, paying £50. And at the end of that time he may extend the patent for seven years more on payment of £100; the whole cost of the fourteen years protection, as far as the Patent Office is concerned, being £180. It will be found hereafter that very few patents go through the last stage at all. The first two classes are the most mischievous, as employed by ignorant people or for advertising purposes.

One of the principal objects of the Act of James was the securing, for the public instruction, the statements contained in the specification. But in drawing these specifications the inventor has two different dangers to guard against. Surrounded by rivals, he often finds the hint he has thrown out taken up by others, and his patent rendered useless by some more effective and cheaper method of attaining the same object. He naturally endeavours then to give as little information as he can to his rivals. And the result is that, if the specifications were to be taken as records of scientific discovery, they would often be quite unintelligible. But, on the other hand, if his rivals succeed in applying his process to some object he has not specified, he has no right to control them. So here he endeavours to make the specification as wide as possible.* These difficulties make the drawing of specifications a matter of much legal nicety, and latterly it has become the business of counsel.

* *Evid. Rep. P. L. Commission*, 1865, pages 656 and 1247.

The patentee, however, having paid for his specification and his patent, has done little to secure its validity. For that the statutory requisites are novelty and utility; but of neither are the Patent Commissioners judges. If the specifications are framed in due form, the patent issues, as a matter of course, even though the same identical invention should be enrolled in the office or in general use throughout the country. The patentee may now fix what price he likes on his invention, or even refuse to fix a price at all; but he is liable to have his right impugned by any one claiming to be a previous patentee; or he may have to restrain others from working his invention without his consent. This brings me to the great evil of the present system, the cost and uncertainty of the litigation. Of the uncertainty no one can have an idea without perusing our reports. The necessity for an immense amount of skilled evidence is a great addition to the expense; and the general result is only to worry the jurors, and leave the ultimate decisions to rest on some point of law, novel and intricate, and bearing but little on the real merits of the question.

There is hardly any page in our social history more painful than this, where we find the law luring on men of talent and genius in pursuit of a phantom, till they are hopelessly immersed in the delays, technicalities, and expense of our courts. Many a man has abandoned a useful occupation, a suitable sphere of intellectual employment, to find, after years of anxiety, that the law was quite unable to give him the protection it professed to give. Nor must we forget the high price the class of inventors pay in endeavouring to secure this protection. The sum expended by this class in connection with fees for patents and specifications during the last ten years is estimated by Mr. Hawes at three millions.*

Again it is stated by Mr. Woodcroft, the chief manager of the Patent Office, that 3,200 petitions are registered annually. Of these, 2000 are actually patented; but only 550 reach the third stage of the four years' protection; and only 100 are found worth the seven years' additional. Thus, of the 3,200 petitions, only a thirty-second part are found worth the fourteen years' protection. But the Patent Commissioners, having no power to decide on the utility or practicability of any invention, the law gives an unlimited power of occupying ground which is very obstructive to real invention. A man gets hold of a crude idea, and takes out his patent; he may be quite incapable of developing his invention, from want of education, of talent, or industry. Its direct aim may be some scientific object which has long engaged a man of real inventive talent. What is the latter to do? Is he to go on at the risk of losing all fruit of his toil, owing to the more rapid development of the new patent? or, if he abandons his object altogether, he may perhaps find in three years that the question is just where it was before, and that the supposed invention has never since been heard of. Or, supposing again that he goes on, convinced of the futility of the rival patent, his work is perfected and patented. He has made use of some

* *Transactions of National Association for the Promotion of Social Science*, 1863.

combination, his own previous discovery, which may be found or supposed to be covered by the abortive patent. The dormant patentee wakes into life; and, if he does not dispute the credit of the whole invention, claims large compensation for the use of this incidental part of it. The mischief done in this way to the natural progress of science is very great; and, if the fees are still further lowered, must increase.

Another mischievous abuse of the present uncontrolled powers of taking out patents is the attempt, by a slightly enlarged specification, to extend old patents ready to expire. This Mr. Webster, in his evidence before the Patent Office Committee, states to be a matter of every month's experience.

Having endeavoured to point out the shortcomings of the patent system, shortcomings which are inherent in, and ineradicable from, any similar system of monopoly, I shall now enquire what necessity there is in our present scientific condition for anything of the sort. As a matter of fact, excepting some isolated discoveries, all the inventions of our time are the result of the general progress of science watched by practical sagacity. The same idea is constantly petitioned for at the same time by different people. It is quite common to find the same invention brought out by different people in England and America. This shows how little danger there is of inventions perishing with their discoverers, as in old time. The present state of scientific discovery has been described by Sir Wm. Armstrong, a great discoverer himself, in remarkable words:—"As in the vegetable kingdom fit conditions of soil and climate quickly cause the appearance of suitable plants, so in the intellectual world fitness of time and circumstances promptly calls forth appropriate devices. The seeds of invention exist as it were in the air, ready to germinate whenever suitable conditions arise; and no legislative interference is needed to secure their growth in proper season."

In the present state of competition every manufacturer of eminence is under the observation of all his brethren in England and elsewhere. They meet each other in those commercial tournaments of our times—the international exhibitions. Each is there, able to scan the result of his rival's resources. Each is ready to avail himself of every aid of science to secure the coveted pre-eminence, and to communicate his discoveries to the public, in order to prove his superiority, and to explain the bona fides of his reduced prices.

Nor are we to assume that of the one hundred patents that annually go through all the stages, the profits go into the pockets of the original inventors. A very large portion, indeed, goes to a class of persons who have been termed "patent speculators." This class of men look out for an inventor with a useful project, who either is without the means of paying the patent fees and the necessary accompanying costs, or, having gone to this first cost, is beset by law proceedings, and unable to go to the cost of defending himself. The speculator then steps in, buys up the patentee's right at any price he chooses to give, and fights out the case. That there are some few inventors who really obtain, by this system, the reward of their talent or their good fortune, as the case may be, is quite possible. That they are

very few is sufficiently evidenced from the fact that the number of patents at all successful is so small, and that even this small number supports the class of speculators I have mentioned. But, assuming that this class of patents was larger than it is, and that the profits of these patents went as they should do, there arises the question whether the allowing a successful patentee to fix his own price is good for him or fair to the public, or whether it would not be a reasonable thing to limit the patentee in some way, either by arbitration or otherwise. I was informed lately of a case in the North of England, where a successful patentee produced a machine at the cost of £200 for working in the linen trade. On this machine his *royalty* is £1000. If the patentee were obliged to sell at a lower royalty, he would probably make more by the increased sale; and consequently, the public would have the advantage of a more general use of the machine. This, of course, is only one of the details of the present system; but, where we find so much to remedy, the question fairly arises, whether the monopoly attempted to be established by patent law ought to be tolerated at all.

How improbable it is that we should suffer from these inventions remaining secret I have already pointed out. As to the stimulus which the Patent Law is supposed to give to inventive talent—that it calls many away from legitimate occupations in pursuit of a speculation, I admit; but I will not admit that this class of half-educated persons groping in the dark for some patent which is to give them fortune make any really valuable discoveries. On the contrary, they only worry the real inventor, by declaring themselves winners of a prize for which he is struggling legitimately. This class owes its existence to the Patent Law, and the sooner we are free from such a class, the better.

But the real inventor works with a consciousness of the light that is in him, and his course will not be diverted by the existence or non-existence of such laws as these. He revels too much in the exercise of the faculties God has given him; and the stream of inventive genius will continue to flow on after the fall of the patent system, as it did in older days before that system existed. All the most important inventions down to our own time were before the patent system. But it will be said here, as I have heard it said elsewhere, Because genius is generous enough to work for you, whether you reward it or not, will you therefore take the fruits of its toil, and bid it be content with the glory of serving you? To this I say, and to all such observations, distinctly No. I have endeavoured to show that the present system, so far from fostering genius, deludes it, ruins it, hands it over to the money-lender and the lawyer. And now I would ask you to consider what really effective plan might be proposed in its stead.

Inventors may be divided into two classes: There is the practical inventor, the engineer, the contractor, the architect, the mechanist whose skill is called out by the urgencies of some great work, and who invents as he goes along. To this same class belong all those inventors—manufacturers of a particular article, who, familiar with certain materials applied in certain ways, devise from time to

time cheaper and more expeditious methods of conbining these materials. Now, this is a class whom the public, by the nature of things can reward themselves, and to the public they may be left. Remember their object is the accomplishment of a particular work, the invention is only a collateral discovery made by the way. They have their immediate reward in the success of their project, in the facility of their manufacture. But they have their more remote reward in the universal estimation in which their services—their manufactured articles—are held by the public. This is a legitimate and natural reward, and interferes not with each man's proper business. It does not involve him in the niceties of specification, nor drag him into endless litigation, wasting his time and capital. And this is the reward which other men of talent are accustomed to look to. If a physician, whose business is the cure of the sick, discovers a particular method of treating any malady, he cannot patent it; he is rewarded by increased reputation and an increased number of patients. It is true, if his new method consists in a particular combination of drugs, he may patent it as a medicine; but that the patent medicine class is a useful product of the patent laws few will maintain. Again, if a lawyer discovers a particular mode of pleading, he has no means of levying a contribution on his neighbour who employs the same after him. But it will be said, if the new invention is published, as I maintain it must be in our present times, what security is there that the inventor will gain at all, when the same article or plan is adopted by all his rivals. To return to the illustration of the medical man, if you wish for a particular method of treatment, even though all the profession have taken it up, would not you prefer going to the physician who had originated it? Would not you think him the best person to apply his treatment to your particular case? Free trade provides for this class of inventors, and to its operation they should be left.

But the second and more important class is that of the scientific inventor, the professional inventor, the inventor properly so called, the gifted man whose lot it is to strike out new roads to wealth and happiness for his fellow-men. And to secure him some reward of his toils is a most important duty. It is this class that supplies the most melancholy example of the working of our present system. They are the victims of the patent speculator; or, if rash enough to do without his aid, meet a still more miserable fate. They should have a provision which would enable them to pursue their investigations, and to enjoy the exercise of their talents. I know the intervention of the State is regarded with suspicion, and justly so, by many schools of social philosophers. But if, in overthrowing the patent laws, you enrich the public by the destruction of a monopoly, by freeing the channel of legitimate invention, we may fairly set apart a portion of this increased wealth to provide for inventors. Let there be a board of examiners, consisting of eminent scientific men, appointed on the plan of the Civil Service Commissioners. Let them have a museum of models like that at Washington, and a register of all inventions like what the present Patent Office professes to be. The actual number of new patents of some value I have

stated on Mr. Woodcroft's authority at about 100 per annum. What proportion of these come from the second class of inventors I have been unable to ascertain with any exactness, though I believe 20 per cent. would be found near the number. This gives an idea what number of inventors we should be prepared to reward. All this class should enroll their works at the registry I have suggested, and produce at a fitting time some evidence that their invention has been carried into effect—to what extent, and with what saving to the public. Let the commissioners then, according to the value of the invention so far ascertained, decide among the candidates who has done most service to the State in their respective departments of invention. The reward should be something in the shape of an exhibition of say £200 per annum for two years, to be extended in duration and increased in amount if the invention continues to work. If, at the end of ten years, the invention has become of general use and of sufficient value, this exhibition might be continued for life. To offer any detailed statement of such a plan would require more minute statistics than I have yet been able to obtain. I merely suggest this plan as pointing out the real class who require protection—the class of the scientific inventors. We have seen the State attempt in particular instances, as in the cases of Arkwright and Crompton, to remedy the absurdity and the injustice of the present system; and to invest some scientific body with this power, to be exercised regularly and on fixed principles, is what I urge.

But my proposition here is essentially negative. That the present patent system cannot maintain its ground, shackling invention, deluding the inventor and involving him in ruinous costs, oppressing the home manufacturer through the operation of free trade, and serving no one class but that which claims least sympathy, the new class of patent speculators.*

DISCUSSION.

Dr. Hancock recommended the adoption of the plan pursued in the United States,† where a patent was never granted unless the invention was really a novel one. A proper scrutiny into this subject was prosecuted by duly qualified persons, the result was that two-thirds of the applications for patents were refused on this ground. In the United Kingdom this onerous duty devolved on some of the most overworked officials in the country, the Attorney-General, for instance.

* Mr. Macfie, who has devoted so much attention to this question, advocates the intervention of the State in this way, viz., that the invention should be bought up by a round sum. But how is the value of the invention to be ascertained till it has been some years before the public? By the plan I venture to suggest the reward could be increased according as the public received increased benefit.

† For a full explanation of the plans recommended by Dr. Hancock, see answer prepared for the Belfast Chamber of Commerce by Professor James Thomson and Dr. Hancock, and transmitted by the Chamber to the Patent Law Commissioners.—*Report of Commissioners on Law of Letters Patent of Inventions*, 1865, p. 197.

Dr. Shaw thought that Mr. Whittle had unjustly branded with censure the class of persons he called Patent Speculators; nor could he agree with Mr. Whittle in thinking that the minor improvements that did not reach the last stage were to be decried.

Mr. James Haughton considered that if the present patent law were sound in principle, there should be no limit to the duration of the monopoly thereby created. Public policy, however, conflicted with such a principle, and the American plan seemed to him the best in practice, though if the system of giving an inventor a sum as direct remuneration could be carried out, it would be preferable; the difficulty was how to estimate the reward.

Mr. J. W. Gregg dwelt on the frauds practised on the true inventor, by making some trivial change in the mechanism, while advocating the fundamental idea.

Mr. Dillon had suffered personally from the abuses complained of by the last speaker, and approved of the American system.

The Chairman, (Sir Robert Kane) said that a great deal of the confusion, and waste of time and money resulting from the existing system, was due to the laws and the legal profession. Cases were tried before judges totally ignorant of the subject, and often without the assistance of a jury. A melancholy instance of the evil results of this system was afforded by the case of Fourdrinier, a Frenchman, who invented the process now in use for the manufacture of paper. At the trial which took place, the Chief Justice, Lord Ellenborough, saw nothing novel in this, and the patent was broken on the application of the paper makers, who, the morning the case came on for hearing, would, as they said, have cheerfully given the patentee £10,000 a year for his life, if he would have compromised it. He and his partners were both made bankrupt by the decision. This shewed the necessity of having such questions decided by men of proper scientific qualifications, and in this he entirely concurred with Dr. Hancock. The question of utility was a very difficult one at first, for it could not be determined till the patent had been for some time in operation. It was to be observed with respect to provisional patents, running only for a short time, that they were frequently taken out only for the purpose of protecting experiments which had to be made more or less in public. A beneficial change had taken place in the point of view in which patents were regarded by the bench. Formerly they were regarded as violations of public rights, and accordingly the patent was broken if the slightest flaw was discovered in the specification. Recently, however, the inventor had come to be regarded as a public benefactor; so that minute differences no longer enabled an imitator to evade the effect of the patent. The principle of mechanical and chemical equivalents was now recognised. Formerly it would have been held that if another person produced the same result as the inventor by any process, mechanical or chemical, equivalent to that employed by the latter, it would have been no infringement of the patent. The rule was different at the present day.

II—*Observations on the Law relating to the Qualification and Selection of Jurors, with Suggestions for its Amendment.*—By Constantine Molloy, Esq., Barrister-at-law.

[Read Tuesday, 16th May, 1865.]

I PROPOSE in this paper briefly to direct attention to the expediency and necessity of some amendment being made in the law with reference to the qualification and selection of jurors; and, with that view, to submit some suggestions to the consideration of this Society.

The law on this subject is principally contained in the Jurors' Act, 3 & 4 William IV. ch. 91, which is an Act to amend and consolidate the laws relative to Jurors and Juries in Ireland. This statute was enacted in 1833, just one year after the passing of the Irish Reform Act; and, as it was found expedient in 1850 to adopt a new standard of qualification for the elector, so also is it necessary now to fix some new qualification for the juror. As the law at present is, having a lease for his holding is an indispensable part of the juror's qualification, except in one or two classes of jurors who form a very small portion of the whole; and whether, from the disinclination of the landlords to grant or of the tenants to take leases for their holdings, the persons holding by lease have of late years in this country been reduced to a very small number, so much so, indeed, that it will soon be very difficult if not impossible, in many counties to procure a sufficient number of persons duly qualified to serve as jurors; and hence the necessity for some change in the law.

The first section of the Jurors' Act prescribes the juror's qualification. He must be a man between the ages of twenty-one and sixty, resident in the county in which he is qualified in respect of property; and those who are qualified to serve as jurors in counties in respect of property may be divided into three classes: Firstly; every man having in his own name, or in trust for him, within the county in which he resides, £10 by the year, above reprises, in lands or tenements, or in rents issuing out of any lands or tenements, or in lands, tenements, and rents, taken together, in fee-simple, fee-tail, or for the life of himself or some other person or persons. Secondly; Every man who shall have within the county in which he resides £15 by the year, above reprises, in lands or tenements, held by lease or leases originally made for an absolute term of not less than twenty-one years, whether the same shall or shall not be determinable on any life or lives. Thirdly; Every resident merchant, freeman, and householder, having a house or tenements in any city, town, or borough, of the clear yearly rent of £20—such city, town, or borough not being a county in itself.

These three classes comprise all the persons who are qualified to serve as county jurors in any of her Majesty's courts of record in Dublin, in all courts at the assizes, and on grand juries and petty juries at the quarter sessions. But in counties of cities, and counties of towns, in addition to the three classes already mentioned,

there is a fourth, namely—every resident merchant, freeman, and householder, having lands, or tenements, or personal estate of the value of £100. These also are qualified to serve as jurors in any of her Majesty's courts of record in Dublin, and all courts at the assizes for such county of a city or county of a town.

The names of all persons who are qualified and liable to serve as jurors in each county are to be inserted in what is called "The Jurors' Book," and that record is made out in this way: The clerks of the peace in each county, within a week after the Midsummer Quarter Sessions in each year, deliver to the collectors of grand jury cess for each barony a precept requiring such collectors, within a month, to make out and deliver a true list of all persons in their respective districts of collection who are qualified and liable to serve as jurors according to the act. These lists are left open to public inspection for three weeks in the offices of the clerks of the peace, and are afterwards submitted to the justices assembled at the special sessions to be held in October; and the justices are empowered to examine and revise the lists, to insert the name of any qualified person who has been omitted, and to strike out the name of any person who is not qualified or liable to serve, or who is disabled by lunacy, imbecility of mind, deafness, blindness, or other permanent infirmity from serving on juries; and when the lists have been so revised and confirmed, the justices are directed to cause one general list to be made out, containing the names of all the qualified persons arranged according to rank and property. This general list is then delivered to the clerk of the peace, who causes it to be truly and fairly copied into a book to be by him provided for the purpose; this book is called "The Jurors' Book." It is delivered to the sheriffs, and from this jurors' book the sheriff is to select the persons whom he summons as jurors.

It is obvious that this plan of casting upon the cess-collectors the duty of ascertaining who are qualified to serve as jurors is a defective one, as the cess-collectors have not the means of adequately performing that duty. It is no part of their business as cess-collectors to know the tenure upon which each cesspayer holds the land in respect of which he pays the cess. That involves an inquiry into the private affairs of the cesspayer which the latter, misunderstanding the object of the collector's inquiry, may regard as a piece of impertinent curiosity on his part and so refuse to give him any information; or if he happen to understand the collector's object, and be a person anxious to avoid the trouble of having to attend at the assizes or sessions as a juror, he may deny that he has a lease; or, again, if he be a person anxious for the little importance which he imagines the fact of serving as a juror at the assizes would give him, he may pretend to the collector that he has the requisite lease. But in neither case, whether he altogether withholds information, or knowingly and for the purpose of misleading the collector gives wrong information, can he be punished; so that it is next to impossible for the collectors adequately to perform their duty in this respect. And if any person would take the trouble of examining the jurors' book for any county with which he happens to be well

acquainted, he will find that while it contains the names of several persons who are not qualified, it omits the names of others who are.

Now this defect in the mode of ascertaining who are qualified to serve as jurors arises from the law requiring a lease for life or term of years as part of the qualification of those who must always in this country form the great bulk of the jurors—namely, the occupiers of land; and that part of the qualification might well be dispensed with. There is no magic in the parchment of a lease; the possession of it will not render its fortunate holder a more intelligent or impartial juror than he would be if he had the land without the lease. Furthermore, as the occupiers of land who now hold by lease are very few in number, and are yearly still further decreasing, there arises a great necessity for dispensing with a lease as part of the qualification; and unless some change of this kind is made, the administration of the law by trial by jury will be attended with great difficulty, owing to the impossibility of procuring a sufficient number of persons qualified to serve as jurors. A difficulty of this kind has already occurred in one county, where the administration of the criminal law at two successive quarter sessions was for the time brought to a stand-still; and I may refer to this as an example of what will probably occur again and elsewhere if the law is allowed to remain as it is at present, for the cause which produced the difficulty to which I refer is not local, but general. Formerly, letting by lease was quite a usual tenure in Ireland, but now it is the exception instead of the rule. The modern and improved plan of estate management, which every year is becoming more general, is not to give leases, but to oblige the tenant to enter into a species of agreement which is little if at all better than a mere tenancy at will. Whether such a course is calculated to encourage industry and promote improvement is foreign to the present paper, but its effect on the system of trial by jury is well worthy of consideration.

The Barony of Geashill is one of the four baronies that constitute the Tullamore Quarter Sessions district or division, in the King's County; and from a Parliamentary Return, printed by order of the House of Commons in 1863, it appears that this Barony has an area of 30,874 acres, and a population of 4,562 persons; that 176 persons were qualified to vote for members of parliament in that year; and of persons rated to the relief of the poor there were as follows: at £10, and under £20, 138; at £20, and under £50, 94; at £50, and under £100, 31; at £100 and upwards, 261. Yet in this vast territory, with so many persons in it who in point of social position and intelligence are in every respect qualified to serve as jurors, it so happens, owing to the peculiar qualification required by law, that there are only two persons who possess that qualification, and whose names appeared on the Jurors' Book for 1859, '60, '61, '62, and '63; and I may add, of my own knowledge, that these two persons are not liable to serve as jurors, for they are, each of them, over sixty years of age. A similar state of things, though not to the same extent, prevails in the other baronies, the number of persons qualified to serve as jurors has become very small, and the result has been that a serious difficulty has occurred to which I will now

refer, as it shows the great necessity for some change being made in the law as to the qualification of jurors.

In the month of August last year a cattle-dealer was robbed of a large sum of money, in fact all his capital; the money was afterwards found concealed in a stable, and a man charged with the offence was brought before the magistrates, who sent the case for trial to the next Tullamore Quarter Sessions, which would be held in October, and they took bail for the appearance of the accused. When the Sessions came on, the accused, for some reason or other, did not wish to be tried at that sessions, and as the Crown would not consent to a postponement, he effected his object by exhausting the panel by his challenges, so that a jury could not be had to try the case, and the trial had to be postponed to the following January Sessions, and the accused stood out on bail in the mean time. But at the January Sessions the accused again succeeded in exhausting the panel by his challenges, although the sheriff had taken care to have every available person on the jurors' book summoned; yet the number of qualified persons in the district was so limited, that after deducting the persons summoned on the grand jury, and those challenged by the prisoner, a full jury of twelve did not remain, and the Crown was obliged to bring the prisoner to trial in another quarter sessions district, a proceeding that was attended with considerable expense, and is not altogether free from doubt as to its legality. Besides, the failure in having a trial at the October sessions inflicted a great hardship on the prosecutor; it seriously interfered with his livelihood, for almost all his capital lay in the money that had been stolen, and this the police were obliged to retain in their hands, as it would be necessary to have it produced for identification at the trial; so that the result of the unsatisfactory state of the jury laws, so far as the poor cattle dealer was concerned, was that he was deprived of his capital from October to January.

A change in the law as to the juror's qualification is therefore not only expedient, but necessary, and I think an amendment dispensing with the lease as part of the qualification, and rendering every man between the ages of twenty-one and sixty residing in any county, and whose name appeared on the rate-books as the occupier or lessor of lands or premises in such county rated to the relief of the poor at £25 and upwards, qualified to serve as a juror in the county in which he resided, would be attended with great advantage. In the first place, raising the qualification from a freehold or leasehold interest of £10 or £15, as at present, to a rating of £25, would secure a class of jurors superior to the present one. It may be objected that this would be too high a qualification, and would confine the jurors to a small number, that would not be sufficient for jury purposes, and that in fact the remedy would be as bad as the disease. But I do not anticipate that such would be the result. I think that the number of persons qualified under the new system here proposed would be more than sufficient for all the purposes of trial by jury. I think that such a change in the qualification would have the same effect on the number of persons qualified to be jurors, that the Parliamentary Franchise Act of 1850 had in increasing the

number of electors: and such a change in the qualification would be attended with this further result, that it would so increase the number of jurors that the sheriff would no longer be obliged, as he may be at present, to summon the same persons to every assizes and sessions; and that a juror, having attended at a sessions and assizes, would not be required to attend again at an assizes or sessions during the same year. Any person in the habit of attending the courts in Dublin, or at the assizes or sessions in the country, must have observed that it is almost always the same persons who are serving on the juries. Beyond all question, it is a great hardship on these persons to be always called on to serve as jurors, while others equally competent, and who in justice ought to bear part of the burden, are never required to serve. This anomaly, which in a great measure arises from the necessity that exists at present for summoning the same persons, would be removed by the increase in the number of jurors that would result from the change in the qualification which I have suggested. The duty of serving as a juror could be divided, and each juror would not be required to attend at more than one assizes and one sessions in each year. This advantage is secured to jurors in England by the English Jury Act, the 6th Geo. IV. ch. 50. By the 42nd section of that statute a man is exempted from being again summoned for a certain period, which in some of the shires is so long as four years, and in none less than one year. And in this country, with regard to juries in the Civil Bill Court, it is provided by section 100 of the Civil Bill Act, that no person shall be summoned or compelled to serve on such juries more than twice in one year, or who shall have been summoned and shall have attended any jury at the assizes or any court of nisi prius, or at the quarter sessions, within the six previous months. The advantage enjoyed by jurors in England should be conferred upon jurors in this country, and the sheriff should be rendered liable to a penalty in case he again summoned a juror within a certain period, unless he had the order of a judge or chairman of a county, who should be empowered, in case it became necessary to summon the juror again within such period, to give the sheriff an order to that effect.

The law with reference to the qualification of special jurors also requires amendment. By the 24th section of the Jurors' Act, the sheriff or under-sheriff is required, within ten days from the delivery of the Jurors' Book for the current year to either of them, "to take from such book the names of all such persons as are sons of peers, and of all baronets, knights, magistrates, and of persons who have served or been returned to serve the office of high sheriff or grand juror at the assizes, and of all bankers and wholesale merchants who do not exercise retail trades, and of all traders who are possessed of personal property of the value of five thousand pounds, and of the eldest sons of such persons respectively." This duty is always performed by the under-sheriff, who very frequently is a perfect stranger to the county, and has had no connection with it previous to his appointment. Yet under this section he is expected to perform a duty which requires an intimate knowledge of the position,

relationship, and circumstances of the several persons whose names appear on the Jurors' Book. The Jurors' Book itself may show him who are the sons of peers, baronets, knights, magistrates, and bankers, for these particulars may appear on the Jurors' Book; but how is he to ascertain what persons have served or been returned to serve the office of sheriff or grand juror at the assizes? I believe no such record is preserved. Or again, how is he to ascertain who is a wholesale merchant not exercising a retail trade? or who is a trader possessing personal property of the value of five thousand pounds? or again, what persons on the list are the sons of any of the several classes already mentioned? It is impossible for the sheriff to be able to ascertain those particulars, or adequately to perform the duty expected of him under this section. The present qualification for a special juror should be repealed, and there should be adopted in its stead a rating qualification of, say—in counties £100 and upwards, and in counties of cities and towns £50 and upwards.

The persons qualified under this proposed system would always be easily ascertained by the official whose duty it would be to make out the jurors' lists. An examination of the rate book would at once show who they were, and when a person ceased to have the necessary qualification, it would be at once known, and his name could be struck off instead of being allowed to remain on the list, as it is in too many instances at present.

The advantages of a rating qualification as a substitute for the present one are obvious, and I think that the amount of the rating which I have suggested would answer all purposes. But before that or any other amount is finally adopted, it should be ascertained how many jurors such an amount would supply; lest if too high a rating should be fixed upon, the number of persons qualified under it would be insufficient.

There is a strange anomaly in the Jurors' Act with reference to want of qualification as a ground of challenge, for which it is declared by the 20th section to be a good cause of challenge to a common juror. It is expressly provided that it shall not extend in any way to a special juror. This difference ought to be removed, and want of qualification as a cause of challenge should apply to the special as well as to the common juror.

At present the sheriffs are in the habit of summoning too large a number of jurors to the assizes. As far as I have been able to learn, the jury panels at the assizes usually contain from one hundred and sixty to one hundred and eighty or two hundred names. This is a number far beyond what is required, and some limit should be put to the number of jurors which the sheriff under ordinary circumstances would be empowered to summon. Formerly he returned two panels of jurors at each assizes, one for the Crown Court, and the other for the Record Court. It was discretionary with him how many he would summon to the Crown Court provided he returned a competent number, but he was restricted as to how many he would summon to the Record Court, for by the 12th section of the Jurors' Act it was enacted that the number of jurors in any panel for the trial of all issues at the assizes or sessions of nisi prius

should not be less than thirty-six nor more than sixty, unless by direction of the judges appointed to hold the assizes, who were thereby empowered to direct a greater or less number to be returned. This 12th section, however, was repealed by the Common Law Procedure Act of 1853, and since then the sheriff returns only one panel for both courts. The rule which formerly prevailed as to the record panel ought to be re-enacted, and the sheriff restrained from summoning an excessive number of jurors, by declaring that the panel should not contain less than say sixty or more than one hundred, unless a judge who should be empowered to make such an order whenever it became necessary had directed a greater or less number. Such a panel would be amply sufficient, and would prevent the abuse that at present exists of unnecessarily summoning a large number of persons to an assizes where their services will not be required.

There is one other suggestion which I would offer, namely, that the mode of calling the jurors should in both courts be assimilated; at present it is different. In the Crown Court the jurors are called in the order in which their names appear on the panel, but it is otherwise in the Record Court—there the jurors are called by ballot. By the 19th section of the Jurors' Act, the name of each juror on the panel is to be written on a separate card and put together into a box provided for the purpose; and, when any issue is to be tried, the clerk is in open court to draw out twelve of the said cards, one after another, after having shaken them together, and if any of the men whose names shall be so drawn shall not appear, or shall be challenged or set aside, then such further number as shall make up the number of twelve shall be drawn who shall appear, and who, after all just causes of challenge allowed, shall remain as fair and indifferent,—and the said twelve men shall be the jury to try the issue. I cannot see any valid objection to this method being also adopted in the Crown Court; it would get rid at once and for ever of any objection founded on the panel being arranged in a particular way.

These are the observations and suggestions which I beg to submit for the consideration of this Society, and I have to apologize for the crude and imperfect mode in which they are presented.

In referring to what occurred at the Tullamore Quarter Sessions, I stated that the causes that produced that stoppage in the administration of justice were not local but general; and that what then happened would occur again and elsewhere, unless some amendment was made in the law. This statement has been confirmed by the proceedings at the very next Sessions for the county of Wicklow, as appears by the following extract from the *Irish Times* of 23rd June, 1865.

"Tinahely, County Wicklow, 21st June.

"At the Quarter Sessions here, this day, before J. W. Lendrick, Esq., Q.C., chairman of the county, four traversers were in attendance, charged with having obstructed a police-constable in the discharge of his duty, and on the Clerk of the Peace proceeding to call the

Grand Jury to consider the bills of indictment, Messrs. Burkitt and Clare, attorneys for the traversers, challenged the panel as containing the names of persons not qualified to serve as jurors; whereupon, as each grand juror was called, he was examined as to the tenure of his land under Lord Fitzwilliam, the owner of the entire division, and, all but nine having admitted that they had not any leases, the court decided that only those nine were qualified, and consequently the criminal business could not be proceeded with, as nine would not be sufficient to find a bill of indictment, and the traversers were discharged upon giving bail to keep the peace."

DISCUSSION.

The CHAIRMAN (The Right Hon. the ATTORNEY-GENERAL) complimented Mr. Molloy on the ability he had exhibited in his paper, in treating so important a subject, and was glad that a gentleman of Mr. Molloy's abilities had taken up this important subject. In it he had clearly shown that a necessity existed for legislation on this question; and they could not but have observed the difficulty which had arisen from fixing the qualifications of jurymen at so remote a period. A change of circumstances manifestly pointed out a necessity for some alteration in the qualification, and it appeared to him that the question really to be considered was, what amount of rating would produce in the counties a sufficient and not too large a number of jurors, and at the same time supply a sufficiently intelligent class of men to discharge the important duties of jurymen. He conceived it would be well to postpone the discussion until after the reading of the next paper, which was of a kindred nature.

See page 201.

III.—*The Venue for Trials, Civil and Criminal.* By Mark S. O'Shaughnessy, Esq., Barrister-at-law.

[Read Tuesday, 16th May, 1865.]

To secure a full, fair, and impartial trial of such issues as, for the adjustment of personal disputes, or for the protection of public rights, it may become necessary to decide, is surely an object to which, in the interests of the public, none can be pronounced as superior.

That, for a jury, men should always be had in whom this great public trust may be reposed with confidence, there should be upon the face of the panel a body of men such as, by character and station, would be above imputation.

To know whether each locality in which trials may be had would afford a sufficient number of qualified persons, becomes then a necessary element in the consideration of the question as to the qualification of jurors; and to that question, therefore, the complement is, the consideration of the fittest locality in which trials should take place.

The general considerations involved in this question resolve themselves (I think) into the following:—Whether those to whom these issues are submitted should approach their consideration with minds on which no impression whatsoever, whether as to the persons or the circumstances, has been made; and that, to secure this object, in all cases the trial should be had away from the influence of local feeling?—or whether, for purposes of convenience, or to obviate inconvenience incident to holding investigations at a distance from the locality where the circumstances occurred, the trial should be had in the locality where the facts to be investigated arose?

The ancient practice of the law required that the jury should consist of persons who were witnesses of the facts, or at least in some measure personally cognizant of them, and who consequently in their verdicts gave, not as now, the conclusion of their judgment upon facts proved before them in the cause, but their testimony as to facts which they had antecedently known. Accordingly the jury were summoned from the immediate neighbourhood where the facts occurred, from among those persons who best knew the truth of the matter. The separation of the functions of the jury and the witnesses came very slowly into effect. So late as Charles the Second's time the right of a juryman to communicate privately to his fellow-jurymen evidence which had not been produced in court was judicially recognized. But the modern doctrine is, that if a juryman have a knowledge of any matter of evidence in a cause which he is trying, he ought not to impart the same privily to the rest of the jury, but should state to the court that he has such knowledge, and thereupon be examined and be subject to be cross-examined as a witness. Now, although the ancient practice of summoning the jury from the neighbourhood where the cause of action arose had its foundation in the trial by witnesses rather than by judges, yet the convenience of local trials is dwelt upon by Sir Matthew Hale, who in his History of the Common Law remarks, that to obviate the troublesome and most expensive attendance of jurors and witnesses, the trial is brought home to them in the county where most of them inhabit.

Thus, then, we are easily led from the ancient practice and the principles which guided it, to the consideration of the more modern division of actions into local and transitory, and the system of fixing accordingly the venue or place from whence a jury is to come for the trial of the cause. In local actions, that is such as could only have arisen in a particular place or county, as in ejectment, or in actions for injuries to real property, the case must have been tried in the proper county where the property was situated; but when the action is brought for an injury to the person or to personal property, and in general when it is founded on a contract, express or implied, it is said to be transitory; at the option of the party injured (the plaintiff) the venue might be laid in any county, subject, however, to the power of the court to change it to the county where the cause of action arose.

Some exceptions were made, as for instance, in favour of magistrates, public officers, and the like, who could not be proceeded

against for acts done in discharge of their duty, save in the locality where the acts complained of took place; but with the exception of these, and of that raised by the favour in all matters pertaining to land which pervades our legal system, it was in the power of the party injured to select the place where the trial was to be had. But in fact it would seem that the practice grew out of the statement implied in the venue, that the cause of action had arisen in that place, it being changed, on the common affidavit, to the place where in fact the action did arise; for, as is said in Reeves' *History of the English Law* (iii. 107, &c.), "there was great doubt how far the jurors might take cognizance of matters that happened out of the county."

But in criminal cases, and even (in general) in actions under penal statutes, the common law made the venue the county in which the offence had been committed; the exceptions were mainly the creatures of statute, and these in general left to the prosecutor the choice between the county where the offence had been committed and that in which the prisoner had been apprehended. In some classes of offences the next adjoining county might be selected, but, without entering into tedious particulars, the rule may be taken as already stated.

Yet, if justice so demanded, this rule yielded to the necessity, and it lay in the power of the Court of Queen's Bench to say if that occasion had arisen. The elements for the consideration of the court may be gathered from the remarks of the late Mr. Justice Perrin, made on a recent and a very remarkable occasion. In the case of the Queen *v.* the Rev. Peter Conway, prosecuted by order of the House of Commons, the Court of Queen's Bench in this country was applied to, that the Attorney-General may be at liberty to enter a suggestion upon the record, that a fair and impartial trial could not be had by a jury of the County of Mayo, and that it was convenient that the issue be tried by a jury of the County of Dublin or such other county as to the court should seem fit. In his judgment the eminent judge already named cited Wilmot J. (R. *v.* Harris, 3 Burr. 1334) to the following effect:—"There is no rule better established than that all causes (*i. e.* criminal cases) shall be tried in the county and by the neighbourhood of the place where the fact is committed;" "and I have," said Mr. Justice Perrin, "for more than two-thirds of a century learned and been successively confirmed by that time in the conviction that trial by a jury of the vicinage is of the essence of the protection of the rights and liberties of the people of the kingdom" (9 Ir. C. L. Rep. 520–1). But in the same case Mr. Justice Crampton called attention to what he designated "another common-law right, equally open to defendants and prosecutors, namely, that where it appears that either party cannot obtain a fair and impartial trial in the proper county, then the court has jurisdiction to take the case out of that county, and to bring it into an indifferent county" (525). The statute (19 & 20 Vic. cap. 16) under which the trial of Palmer was had, not in Staffordshire, but in the Central Criminal Court, became necessary because of the peculiar jurisdiction of that court, extending as it

does over the City of London and County of Middlesex, as well as over portions of the counties of Essex, Kent, and Surrey. In that instance it was the desire of the prisoner that the trial should not be had in his own neighbourhood, where the imputation of the serious offences with which he was charged had so prejudiced him that he believed a fair and impartial trial could not be had. When the bill came down to the House of Commons, the Chancellor of the Exchequer stated that the prisoner (Palmer) was an acquiescent party to the arrangement. He had in fact previously applied to the Court of Queen's Bench to remove the indictment into that court, on the ground that a fair and impartial trial could not be had in Staffordshire or elsewhere in the midland counties (5 Ell. & Bl., 1024, Q. *v.* Palmer). But as the act was to have a general application, and had been rendered necessary by reason that the Queen's Bench, though competent to grant a trial at bar, that is, before the judges of the court, or to have moved the venue to an adjoining county, was unable to remove the indictment into the Central Criminal Court, the terms on which that removal should take place were much discussed. Sir John Packington suggested that it should be a condition that the consent of the accused should be obtained; this was also urged by Mr. Whiteside, and in following up the same view Mr. Henley dwelt upon the injustice of the compulsory removal of the prisoner from the place where he is known and where he also knows those by whom he would be tried, thus destroying all opportunity of challenging the jury. On the other hand, the then Attorney-General for England (now the Lord Chief Justice, Sir Alex. Cockburn) objected that from a traverser who had influence in a locality (as was alleged in the Mayo election case already mentioned), that consent would never be obtained.*

Sufficient has now been said to mark with reasonable clearness the strong and steady current wherein our system carried all issues of fact to the place in which the facts had occurred. In criminal trials it holds on still, varying only to meet, in the interests of justice or for greater convenience, certain cases for very special reasons. In all things pertaining to the reality the rule was all but inflexible; nay, there was an old rule of the Court of Common Pleas, "that all actions upon the case, trespass for goods, assault, or imprisonment arising in any county, be laid in the proper counties, unless they arise where judges of nisi prius do seldom come;" but this became obsolete, and the party injured in his person or goods was allowed to lay his venue where he pleased. Yet here, too, the defendant could come to the court, and according to the practice before 1854† it was the absolute right of the defendant to change the venue in all actions founded on simple contracts (except on bills of exchange and promissory notes) upon producing the common affidavit, viz.,

* In the recent discussion (9th May) in the House of Lords on the *Jurics (Ireland) Bill*, the Earl of Donoughmore and other lords seemed unaware of the powers of the Court of Queen's Bench in Ireland so to deal with the place of trial in criminal cases, as to prevent a failure of justice by reason of local prejudice.

† Ferg. Pr. ii. 853.

that the cause of action arose elsewhere. So strongly do the reasons in favour of local venues press upon the judicial mind, that so late as 1857 a report of a royal commission, urging the issuing in England of a winter commission to despatch the business accumulated between the summer and the following spring circuits, dwelt on the advantages to suitors in counties neighbouring to those to which the commission may be sent, of being enabled to lay their venues nearer home, and not have to come up to the after sittings at London or Westminster.

By the act which came into operation in Ireland on the 1st of January, 1864, all actions except that of ejectment being called "personal actions," it was enacted that in any personal action the venue may be in any county which the plaintiff thinks proper, power being given to the court or a judge to change it to any county in which the trial can be more conveniently or properly had, on special grounds only, and not merely because the action accrued in any particular place or county. Let us pause to consider how this may work; during the ten years or more that this system has been in operation, the case may have, and probably has, arisen frequently. A person, little if at all removed from destitution, has some real or fancied cause of complaint against a man of substance, and carries his wrongs for redress to an attorney, who sees that a good case can be made, a verdict had, and his costs at least secured The parties may reside in some place to which in due time the circuit judges would come—Lifford or Ennis, far away in the south or high up in the north, but the plaintiff has a statutable right, and lays his venue in Dublin. The defendant wishes to save himself the expense of taking witnesses an immense distance; he prefers to remain minding his business at home, to having to wait in Dublin for the trial to come on. He feels too, it may be, that justice would be more surely done by those who have daily knowledge of himself and of the other litigant party, in the place where reputation grows from day to day, till, by fine indescribable but not impalpable traits, the credit to be attached to every man, be he rich or poor, and the favour to be shown to him according to his deserts, are well and generally defined. Thinking, then, that in their own neighbourhood and by their own neighbours his acts and the plaintiff's wrongs would best be measured, the defendant makes his affidavit and sets out the special grounds, showing a preponderance of convenience, on which he seeks to change the venue. The motion may be resisted or it may not; if granted, the costs will be costs in the cause, to increase his expenses should a verdict pass against him, never to be had from his poor opponent should the case fail; but, in any case, his own costs in the matter are lost to him. Such circumstances as these, which to every barrister in common law practice are by no means unusual or unfamiliar, may have incidents of oppression which have been adverted to (as will presently be seen) by some well acquainted with such facts. Yet the increase of costs, and that unnecessarily, is the invariable attendant upon all such cases, whether the litigant parties be or be not solvent. However, inasmuch as her Majesty's commissioners appointed to inquire into the supe-

rior courts of common law in England and Ireland have made this matter the subject of a portion of their report, their recommendations should first be stated. They say :—"By the Irish Common Law Procedure Act of 1853, the venue in all personal actions, which includes many which would be local in England, is made transitory in Ireland; on the other hand, actions by and against assignees of leases have long been by express enactment transitory in Ireland whilst they are local in England. These actions might advantageously be made transitory in England, and the venue in all other classes of actions which are now local in England ought to be local in Ireland." And they recommend (sec. iv. 13):—"That in all actions (except actions by and against assignees of leases) which are now local in England should be local in Ireland." They say further (p. xiii.):—"As to those actions which are transitory in England, but which are substantially, by reason of the character of the dispute and the residence of the witnesses, country causes, there is a general tendency in the practice at chambers to change the venue from London and Middlesex to the country, which tendency is caused by a reluctance to increase the burthen which the heavy nisi prius business in town imposes upon the London and Middlesex juries.

In Ireland a similar reason does not exist, so that there is no balance of general inconvenience to disturb the practice which has prevailed in Ireland since 1853. In this case we think the Irish practice should be retained in Ireland, but not extended to England."

With the utmost deference to the opinion of men so deservedly eminent as are those who signed that report, the question is not one of the labour imposed on jurors, whether in London and Middlesex or in Dublin, but of convenience to suitors. Moreover, the present system is one causing a preponderance of cases in one locality to be tried by one set of jurors, and tending therefore, in Ireland as in England, to increase the burthen of business upon the jurors "in town."

It is deeply to be deplored that it is not proposed to change a system, of which one of the most eminent men at the Irish bar, Mr. John Thomas Ball, Q.C., states his experience to have been, that "to withdraw the case from the neighbourhood where the character of the parties and their witnesses is known, has tended to increase expense, encourage speculative actions, and make the result uncertain."

In favour, however, of continuing that system, Mr. Whiteside says :—"I shall also mention another change in practice sometimes complained of, chiefly, I believe, by young and inexperienced professional men. No person can doubt that, *cæteris paribus*, a record will be tried more satisfactorily in Dublin by a city jury, assisted by a central bar, than on circuit, in the hurry and scramble of an assizes. The old rule as to venue in transitory action was utterly uncertain. The plaintiff laid his venue where he pleased; the defendant uniformly changed it on an affidavit that the cause of action arose in some other county, a statement which in a transitory action was in nine cases out of ten an impalpable fiction; and then the plaintiff, in almost every case, moved to restore or retain his venue on special grounds of convenience, or on conflicting affidavits as to residence of witnesses.

Some classes, *e. g.*, attorneys, had peculiar privileges as to venue denied to other persons. Now, nothing finally controls the venue but the relative convenience of the place for trial, and where no reasons can be offered to turn the balance, the suitor naturally has the choice. Thus, a multiplicity of idle motions, sustained by hard swearing and at a great expense, are cut short, and as a general rule, the important records are tried at Dublin, where for obvious reasons the suitor prefers to have his case tried. He escapes the hurry and confusion of an assizes, the time of despatching the reduced business at the assizes being inconveniently short."—(pp. 108-9.)

The system, too, has in its favour the weight of the opinion of the present Solicitor-General (Mr. Sullivan), who gives it the preference over that in England.

On the other hand, Master Fitzgibbon, Sir Colman O'Loughlen, (Serjeant-at-law), Dr. Battersby, Q.C., Dr. Ball, Q.C., Mr. Hemphill, Q.C., Mr. Morris, Q.C., and others condemn the present system. To comprehend their reasons the following may be read. They are the opinions of members of different circuits :—

"I think the system in Ireland which enables a plaintiff to lay the venue where he pleases, and throws on the defendant the necessity of making a special case in order to change such venue, is faulty to an excess ; it throws the burden on the wrong party.

"I would suggest that the defendant be at liberty, as heretofore, before the Common Law Procedure Act, to change the venue by motion, without notice, on the common affidavit, and then to enable the plaintiff, upon a proper case, to bring back the venue to the place he originally laid it.

"I have been in cases where a defendant has been obliged to bring all his witnesses to a distant county, although the plaintiff, who was confessedly a pauper, and all the plaintiff's witnesses, resided in the same county with the defendant.

"The only convenience often suggested is, that a trial can sooner be had in the county where the venue was laid by the plaintiff, than in that where the cause of action arose, a convenience which a plaintiff can always secure, as he can select the time for bringing the action. I do not think that convenience to the plaintiff an equivalent for the mischief arising from pauper and disreputable plaintiffs bringing speculative actions, laying the venue in counties where their position and character are unknown.

"I have known instances of successful experiments of that nature, where the action would never have been brought if the case should be tried in the place where the plaintiff's character, and that of his witnesses, were known ; and I have likewise known instances where such actions were abandoned on the venue being changed to the proper county."—(Henry Concanon, Esq., Barrister-at-law, *Connaught Circuit*, *p.* 119).

"I cannot too strongly or forcibly express my opinion upon the injurious results of the provision as to "venue," Irish C. L. Proc. section 72 ; I have heard it stated it was the concoction of some leading practitioners of both branches of the profession at Dublin nisi prius. I know that parties bring actions and lay their venues

in Dublin, where they are not known, and which they never intend to proceed with, if the defendant, escaping the special demurrers to a motion to have the case tried in the vicinity, meets the capricious views entertained of the words "more conveniently and properly tried." A defendant cannot, in the very plainest case for so doing, apply to change the venue until after his defence is filed, often not until notice of trial is served. Possibly the defendant's affidavit has not been revised by counsel, nor the stereotyped statements introduced, which various cases have decided to be indispensable. Perhaps a hardy plaintiff meets the defendant's case by a counter affidavit that necessary witnesses are resident at the venue selected, the audacity of which assertion many judges will not question or consider; then the usual platitudes of counsel, of plaintiff's statutable right to select any absurd venue; and finally a decision, often on very fanciful reasons. The plaintiff, at the worst, has his costs in the cause, even when the motion of defendant succeeds, and I have known a venue deliberately selected to drive the defendant to a motion to change, thus mulcting him with costs." (Michael Morris, Esq., Q.C., *Connaught Circuit*, p. 126.)

"I would suggest that an error was committed in allowing plaintiffs in all cases to lay the venue in any place they choose. The difficulty at present in changing the venue from the place where the plaintiff has laid it to the place where cause of action arose, and where all parties reside, is very great. Defendant is invariably met with arguments, that plaintiff is not (on slight grounds) to be deprived of right given him by statute; that convenience is to be estimated by expense, which can be calculated by the railway fares, and amounts to so trifling a sum that the court should not regard it; and that plaintiff would be delayed if venue was changed. These arguments generally prevail; and in my opinion the practice of laying the venue in a distant locality has become, in any cases, a real persecution; and I feel satisfied that the facility afforded in having a trial far away from the county where parties reside, multiplies a class of actions which should never be brought, and would never be brought in the assize town and before a jury of the county. The practice in England in this respect is much better than that in Ireland. The old practice of allowing venues to be changed on the common affidavit was, in my opinion, a very salutary one." (James Murphy, Esq., Barrister-at-law, *Munster Circuit*, p. 127.)

"As to the '*venue*,' I should have all actions *prima facie local*, except such as are now triable in the 'Consolidated Nisi Prius Court in Ireland," reserving to the judges, of course, the most ample powers of changing the venue on special grounds. Under the present system, enormous expense is incurred in bringing to Dublin witnesses from remote parts of the country. The expenses of witnesses are generally found to be the heaviest item in bills of costs. Again, special juries are constantly resorted to in Dublin in cases which, if tried in the country, would probably appear in the common jury list, which is in itself a great additional expense to the suitor; moreover, the class of jurors attending the assizes are, generally speaking, more competent to deal with the evidence of country

witnesses than can be reasonably expected from Dublin juries. I never could understand on what grounds this great latitude as to venue was introduced into Ireland, repugnant alike to the old law and the modern practice in England." (Charles H. Hemphill, Esq., Q.C., *Leinster Circuit*, p. 115.)

It is, then, to be regretted that the tendency of the Commissioners' Report should not be in favour of localizing venues in Ireland; the bar have no reason to object to increasing business on circuit; for some time past they have had reason rather to deplore the want of it. With their attention to the legal business legitimately belonging to the seats of the courts of judicature, the trial of issues of fact is calculated rather to interfere. Moreover, a well-grounded complaint has come from the profession and from the public, as to the juries in Dublin being almost habitually constituted of the same class of men who frequent the courts, not of persons taken indifferently from the large number who must be on the jury panel in so large a population as that of Dublin. This fact is notorious, so notorious as to have formed the subject of public comment alike from the bench and the bar during the term just passed.*

Nor should it be lost sight of, that by taking away the investigation of disputes from the places where they arose, the means of creating and protecting the exercise of public opinion are disregarded. Alike the plaintiff and the defendant, if conscious of misconduct, and dreading publicity, will seek for a trial as far from the knowledge and observation of their ordinary associates as they can. For every reason, then, I would localise the administration of justice, not centralize it. And if it be apprehended that the trial of causes in the very locality where all the parties are known—where, often it may be, the circumstances of the case have been discussed—may taint verdicts with partiality; if it may seem that such incidents are calculated to "prejudice the minds of men who ought to come to compose a jury without any preconceived opinions to decide upon the subject," such fears may be calmed by the assurance to be found in Lord Kenyon's words—words spoken in a proud confidence in the law which it was his noble function to administer:—"The constitution of this country has done all that human prudence can do, that justice should be administered by those who have no wishes on the subject; it is for that reason that various challenges are given by law to a juryman. A relation, in however remote a degree, cannot sit upon a trial, and yet the law does not mean to say that all the relations are villains. The challenge is not deemed a scandalous attack: it is enough to say general rules must be laid down adapted to the case of evil men and good men. If by possibility evil may creep in, shut the door as close as you can; the law, I say, has done as much as human wisdom can do to keep the streams of justice pure and entire." (21 State Trials, 871.)

DISCUSSION.

Mr. O'Reilly Dease believed that Mr. Molloy's paper assumed

* Court of Common Pleas, Easter Term, *O'Brien* v. *Kilbee;* a motion to change the venue from Dublin.

that high sheriffs of counties were incompetent to perform their duties, and he considered that it would have been more germane to the subject to have devised some means whereby the sheriffs should perform their duties more effectually than to assume them at first to be incompetent. With reference to Mr. O'Shaughnessy's paper, he agreed with him that in many cases at present the jury system was unsatisfactory. For his own part, he was aware that in several instances in this city the jurymen were paupers, whose opinion was almost worthless.

Mr. Dodd thought it would be a great grievance if venues were localised. Delays would be caused, and the Dublin merchants having actions against parties in the country would have very great grievances to complain of, if they had to bring their actions in every case where the defendants resided. There was great room for improvement in the class of jurymen; and in the mode of selecting their names, as at present, corruption could be, and perhaps was, largely practised. There was no want of intelligence on the part of the jurors, but they were very frequently more influenced by the consideration of the remuneration they were to receive than by any other motive.

Mr. Leahy, Q.C., bore testimony to the inefficient working of the present jury system. At present the method was for the baronial collectors to send in the names of the persons qualified to serve as jurors, but there was no check upon the baronial constables, and it was well known that very often their friends were left out of the lists. He thought that if the lists were settled in open court by the county chairman as the voting lists were now settled, and if the county chairman had power to fine baronial collectors for neglect of duty, a great deal of good would be effected. The rating qualification should be adopted, and the judge of assize, he thought, should inflict smart fines whenever neglect or abuse came under his notice. As regarded the laying of venues, he conceived that when the venue was laid improperly away from the place where the cause of the action arose, the court should have power to make it a condition precedent to the action proceeding, that the plaintiff should pay the costs of changing the venue to the proper county. It was a misfortune in some cases that a majority of a jury could not decide a case, owing to the obstinacy of one or two, who might be a friend of either of the suitors.

Professor Houston said he had some years ago read a paper suggesting reforms in the jury system, and he was glad to find the opinions he then expressed were now finding such favour. He thought an amendment of the jury system most desirable.

Mr. F. M. Jennings agreed with Mr. Molloy that some judicious reform should be carried out in the present jury systems, but he considered a £25 rating too high.

Dr. Hancock said the important matter to be obtained was a proper qualification for jurors. He thought the being rated on a valuation of £20 (like the English qualification of householders rated at a valuation of £20) would be a suitable qualification, and would give a sufficient increase to the number of jurors. His own

experience led him to think that venues should be localized in questions of wrong or character, and that strong reasons should be urged before the venue was changed from the locality in which the subject of the action took place. He did not approve of the Scotch jury system.

Mr. Conn referred at some length to the grievances under which the jurors laboured—the expense and trouble to which they were put, without any return, while all other functionaries connected with the law were amply paid for their trouble. There was in consequence great difficulty, therefore, in obtaining jurors. There should be sheriffs appointed who should not depute their authority to the sub-sheriffs.

IV.—*The differences between the Statutes bearing on Public Health for England and Ireland.*—By E. D. Mapother, M.D., Professor of Hygiene R.C.S., Medical Officer of Health, and Surgeon to St. Vincent's Hospital.

[Read Tuesday, 21st February, 1865.]

No medical practitioner who has treated disease in this country, especially in its populous towns, can have failed to observe the insufficiency of our present legal enactments towards its prevention. Upon me this conviction has forced itself more urgently since July last, when I was entrusted by the Corporation with the carrying out of the provisions of the Sanitary Acts concerning this city. Having submitted my views to the Committee of the Corporation with whom I have the pleasure of acting, I was directed to draw out a statement of the differences which exist between Public Health Statutes in England and Ireland, and having done so, I was rejoiced to have been granted this opportunity of bringing the subject forward in this Society, where I enjoy the cooperation of its legal and other members expert in the construction of acts of Parliament. In order to exhibit at a glance the useful statutes from the benefits of which Ireland is excluded, and to systematize the discussion, I have set them forth with their most important provisions on this table.

I may mention, as remarkable facts, that the first Sanitary Act for any part of the kingdom (59th Geo. III., c. 41) was passed for Ireland, and an appeal that its operations should extend to England was made by the famous Dr. Paris and Mr. (afterwards Judge) Fonblanque ; that the first Parliamentary Reports on Public Health related to Ireland; and, thirdly, that it was by the notoriously disgraceful state of a Dublin cemetery, Bully's-acre, that public atttention was first awakened to the dangers of intramural sepulture.

LAWS FOR ENGLAND ONLY.

The Public Health Acts, 1848 *and* 1858; and with them is amalgamated the *Local Government Act,* 1858, which renders legislation for

any town inexpensive. Their most important provision is the power of instituting investigations into the health and sanitary regulations of any town or place upon the petition of one-tenth of its inhabitants, or when it appears that its death-rate exceeds 23 per 1000 (17 per 1000 being the standard of health). That many Irish towns demand such inquiries would appear from the following table, which, by permission of the Registrar-General and the Medical Registrar, Dr. Burke, who so ably represents our profession in the department, I am enabled to publish :—

Return showing, by quarterly periods, the number of Deaths registered in the undermentioned Cities and Towns during the first nine months of the year 1864, *and the proportion per* 1,000 *per annum which the number of deaths bears to the Population.*

Cities and Towns.	Area in Statute Acres.	Population in 1861 of Registration Districts.	First quarter, ending 31st March.	2nd quarter, ending 30th June.	3rd quarter, ending 30th Sept.	Total number of deaths registered during first nine months of 1864.	
			Annual rate to 1000 of population.	Annual rate to 1000 of population.	Annual rate to 1000 of population.	No. of deaths.	Annual rate to 1000 of population.
Dublin ...	3,808	254,808	30·5	23·1	20·2	4,699	24·6
Belfast ...	5,089	112,567	35·3	27·2	24·2	2,439	28·9
Cork ...	13,816	93,389	25·3	23·4	19·8	1,599	22·8
Limerick ...	8,509	50,068	28·8	22 9	20 4	902	24·0
Waterford	17,209	30,570	28·4	18·2	20·8	515	22·5
Galway ...	21,358	24,890	23·8	26·4	21·1	443	23·7
Londonderry	5,060	20,366	19·8	15·3	13·7	249	16·3
Sligo ...	30,835	20,493	29·5	19·3	14·4	324	21·1

I must mention, however, that these figures do not represent the rates of mortality within the municipal boundaries, which are not co-terminous with the registration districts, save in the cities of Dublin and Belfast, and I feel sure that the death-rate of the other actual town-populations is very much higher than might at first be supposed from this table.

I shall cite a few examples to prove the benefits which have accrued from this provision. It having been found that the Vaccination Acts, although compulsory, were not effectual in checking small-pox, the Privy Council ordered a systematic inspection of 1143 districts in England to be made during last year. To show that exertions to eradicate this fearful disease are more urgently required in this country, I shall borrow the statistics collected by the Epidemiological Society. The proportion of deaths by small-pox to 1000 deaths from all causes is as follows :—

London	16
All England	21
Edinburgh	19
Dublin	25
Connaught	60
All Ireland	49

where, moreover, nearly all the deaths occurred in persons unvaccinated.

I have time but to mention the admirable inquiries into the causes of infant mortality; into the neglect of sewerage by the local authorities in several places in England, which was ripening the inhabitants for an outburst of cholera or other diarrhœal epidemic; into cattle diseases in relation to supply of meat and milk; into the state of the agricultural labourers, the results of which caused such interest when the Union Chargeability Bill was being discussed in the House of Commons, as examples of the vitally important investigations conducted during the last few years by Mr. Simon, the officer of the English Privy Council. Public health enactments for this country would be necessarily defective without similar preliminary inquiries.

By another section it was enacted that offensive trades cannot be instituted without the consent of the local board, and the owners are liable to a penalty of £50, and a further fine of £2 for every day the offence is continued.

Its provisions concerning sewerage, waterworks, and pleasure-grounds seem more useful and generally applicable than those of any act bearing on Irish towns. With regard to pleasure grounds for the lower classes, no town can be worse provided than Dublin. In some of the poorer parts, accustomed to no play-ground save the noisome alley, the children present none of the features of childhood. Many spaces from which houses have been removed might be paved and appropriated for such purposes, and I can see no objection to opening and planting disused graveyards, as, for instance, St. Mary's, for public walks, as has been done in other cities.

It provides, lastly, for the establishment of reception houses for the dead; and although such might be repugnant to the feelings of the people of this country, I am forced to say, from the observation of many evils consequent upon the retention of the bodies of persons who have died of contagious diseases amongst the over-crowded living, that it would be highly judicious.

The Nuisance Removal Acts, 1855 *and* 1860, render the local authorities more general than do similar acts bearing on Ireland; for the guardians of the poor, or the inhabitants of any place, if amounting to two hundred, may appoint nuisances-removal committees and an inspector of nuisances; and there is, moreover, power of entry when the local authority or any of its officers "have reasonable grounds for believing that a nuisance exists on any private premises." In case the nuisance is one likely to recur, the justices may prohibit residence in such premises until they are rendered safe—a most powerful means of staying the spread of fever and other contagious diseases. A penalty of £200 may be inflicted if gas washings have been allowed to escape into any stream or other place for water, or any drain communicating therewith; and heavy fines may be inflicted by the justices upon the owners of premises where noxious trades are conducted, or from which injurious effluvia issue. The inspector may at any time seize all food unfit for human use which may have been exposed for sale, or is being used,

or landed from any ship, and the owner is liable to a fine of £10 for each unwholesome article.

The 29th section is the most important, and that for which we have no substitute in Irish acts. It is as follows :—"Whenever the Medical Officer of Health, if there be one, or if none, whenever two qualified medical practitioners shall certify to the local authority that any house so overcrowded as to be dangerous or prejudicial to the health of the inhabitants, and the inhabitants shall consist of more than one family, the local authority shall cause proceedings to be taken before the justices to abate such overcrowding, and the justices shall thereupon make such order as they may think fit, and the person permitting such over-crowding shall forfeit a sum not exceeding forty shillings." In London the magistrates adjudge all rooms to be overcrowded which do not allow 500 cubic feet for each adult, and 300 for each child. It would be better to have this proportion defined as it is in the *General Police and Improvement (Scotland) Act*, 1862, in which, however, the allowance is not sufficiently liberal, for it declares that each person over eight years shall have 300 cubic feet of space, and under that age 150, and that no room having less than 700 cubic feet in space shall be the exclusive dwelling of one family.

There are hundreds of dwellings recorded in our "Sanitary Register" at the City Hall as having developed fever and other contagious diseases, in which over-crowding exists to the utmost, and yet no amendment is possible under any act the legislature has thought of conferring on us. As there are, therefore, no powers in this city by which I could demonstrate the marvellous effect of thinning inhabitants in the prevention of typhus, I borrow an instance from Dr. Gairdner, the Medical Officer of Health for Glasgow. The house No. 83, Drygate-street, aptly termed "the Rookery," consisted of 48 separate tenements, with an average of 4 persons to each room, each individual having 126 cubic feet of space, or one-fourth of the minimum space allowed for each soldier according to the Barracks Commission. In this building 39 cases of typhus had arisen during the year ending June 30th, 1863. Under the Police Act the tenements were thinned, and although fever in the city had doubled, and was prevalent in the very street, but one case occurred in the Rookery during the succeeding year.

If this act should be extended to Ireland, I trust the sentence requiring the house to be occupied by more than one family will be omitted, for it excludes from any amendment many wretched cabins and stables (for even such places are converted to the purpose of human habitation), and which are greatly over-crowded. Any person who will visit Ball's-yard (a closed court off Meath-street), will find several houses consisting of a single room, of about 1,200 cubic feet in space, thronged with six, seven, or even eight human beings, and such dwellings are, moreover, not touched by the Common Lodging House Acts.

I would not advocate any measure for the removal of the poor from their over-crowded rooms, had I not the satisfaction of announcing that dwellings will be shortly offered to them by the

"Dublin Artizans' Improved Dwellings' Company, Limited," which has been founded under most favourable auspices, and I trust that property owners will endeavour to provide decent dwellings for such of the poor as may be dispossessed in the construction of the metropolitan lines of railway. I may mention that the local authorities of towns in England which number 10,000 inhabitants may erect and maintain lodging-houses, and may borrow money for the purpose from the Public Works Loan Commissioners; and, by a special act for that country, the owners of all lodging-houses are required to give notice to the local authority or their officers, and to the poor-law medical officer and relieving officer, if any case of contagious disease arise.

The Nuisance Removal Act, 1860, provides that proper spring vehicles shall be supplied for the conveyance of infected persons; and this is most necessary, for besides the dangers which arise to the public from cabs being used for this purpose, the change from the recumbent to the sitting posture is most hurtful to the patient. It enacts also that the guardians of any union may employ their medical officer to make sanitary investigations, and upon this the Poor-law Board remark: "Hitherto the boards of guardians have not been able to obtain any sanitary report, except as regarded the poor in receipt of relief, unless through the voluntary and gratuitous communications of their medical officer; but hereafter they will be empowered to employ and remunerate him for the information which he can obtain and render to them in peculiar emergencies, when the information may be of great value, either in dispelling unfounded alarm or in stimulating to exertion for the repression of local epidemic diseases."

The Contagious Diseases Prevention Act, 1864, is directed against syphilis, that disease which taints, perhaps, every fortieth babe, and engrafts hereditary maladies on one-fourth of our race, yet which is repressible, to some extent, at least, by coercive measures. It is to be in force for three years in English military and naval stations, and in Ireland at the Curragh, Cork, and Queenstown only; but if successful, I trust all Ireland may share its advantages.

The Registration of Births, Deaths, and Marriages Act, 1836, for England, provides a £10 penalty upon undertakers, clergymen, or others concerned in any burial without certificate. This clause, which may have been too harsh to be enforced upon the first introduction of that truly invaluable system into Ireland, might now be adopted. I am strongly of opinion that registration should include still-born children, as a measure likely to check infanticide, and should record the occupation of each person and his residence, when the disease was contracted, as well as at time of death.

Among local acts which contain provisions desirable for us is the *Metropolitan Interment Act*, 1852, which forbids any burial ground within two miles of the metropolis, while the act including Ireland *(the Cemeteries Clauses Consolidation Act*, 1847*)* merely provides that they shall not be within 200 yards of dwellings without the consent of the inhabitants. I may mention that this country was not included in the inquiries upon intramural sepulture which led

to such beneficial results in England and Scotland ; nor have any investigations been ordered by the statesmen who have filled the Viceroyalty, to which office the power appertains. I have reason to know that the graveyards in many provincial towns are in a most dangerous state.

The Metropolis Local Management Amendment Act, 1862, enacts that cowhouses shall be licensed and inspected. The closeness and filth of many of those in Dublin are dangerous to the surrounding residents, hurtful to the animals, and very injurious to the quality of the milk.

In Glasgow the cubic space for each inmate of tenements is defined, and power is granted for the establishment of houses where the families of persons struck down with fever may take refuge during their treatment, or the purification of their dwellings.

The Liverpool Sanitary Acts (1846 and 1864) provide for the inspection and improvement of tenemental dwellings; and as nearly all the cases of zymotic disease in our own city arise in such houses, of which there are about 9,000, and scarcely one in the registered common lodging houses, I rejoice that we shall have similar powers when the bye-laws, framed for the purpose under the *Dublin Improvement Acts Amendment Act*, 1864, are approved of by the Government.

They provide that every person in the beneficial receipt of rent of any house or part of a house, usually or occasionally let in separate tenements for human habitation for any shorter period than one month, at rents not exceeding three shillings per week, shall, before such letting, cause the roof, walls, and chimneys to be put and kept during tenancy in proper repair, impervious to wet and damp; and shall also cause each window to open from the top, and to be kept glazed and cleansed, and in proper repair; and that every keeper of every such house shall cause a properly-constructed ashpit and privy or water-closet, and a properly-trapped house-drain to communicate with the main sewer (if any) within 100 feet from such house, and cause such ashpit, privy, or water-closet and house-drain to be occasionally cleansed and kept in proper repair. They also ordain penalties upon any occupant or other person residing in any house who shall throw from any window of same to or upon any street, yard, lobby, passage, or place other than that provided for their proper deposit, any water, foul liquid, or other offensive matter or thing.

In Liverpool the authorities are empowered to open all courts which at present are *cul-de-sacs*—a desideratum most truly in this city, if our municipal funds would justify the expenditure.

As an example of the benefits of considering and agitating such legal amendments as I propose in this Society, I may mention that it was mainly through the exertions of our members that the *Bakehouses Regulation Act*, 1863, became law. This act seems to require some slight alteration. Thus, entry is only granted during the hours of baking (nine p.m. to five a.m.)—a period so inconvenient that inspection will never be constant or effective. Lime-washing once in six months is too seldom, as the plentiful evolution of carbonic acid rapidly destroys its efficacy, and rooms above the

bakehouse without abundant ventilation should not be used as sleeping-places, as the heated noxious gases ascend. The act only concerns sleeping-rooms on the same level as the bakehouse.

While advocating the extension of sanitary legislative enactments to Ireland, I will not conceal the fact that some of those which are already in force are not taken full advantage of. I allude to the *Towns Improvement Act, 9th Geo. IV.*, and to that better statute, the *Towns Improvement Act*, 1854, which we heard so highly commended by Mr. Hancock at our last meeting. Only ninety-two towns have availed themselves of the advantages of either, and only ten, according to that almost infallible authority, "Thom's Directory," have appointed surveyors or inspectors of nuisances—officers essentially necessary in carrying out any provision for the sanitary condition of the towns. Thus, about half a million of Irish townspeople are living without a single municipal precaution against the development or spread of preventible disease. The main cause of this neglect in the case of the eighteen towns under the old act appears to be that the owners of houses under £5 yearly value are exempted from the rate, and the remedy is to be found, as most ably argued in the admirable pamphlet published in 1861 by the Sanitary Reform Committee of this city, in the extension of the operations of the Board of Works to the drainage of towns where sanitary investigations shall demonstrate the prevalence of avoidable disease, and by the extension of these sanitary measures to Ireland which I have endeavoured to show have been attended with such happy results in England.

Among laws which are imperatively demanded for the United Kingdom stands first the extension of Factory Acts, or analogous measures, to employments carried on in workrooms of the clothing trades, or in the homes of the workers. The Children's Employment Commission, of which Dr. Grainger, so lately lost to the cause of philanthropy, was an active member, reports, "The hours of work during many months, often throughout the year, are excessive and destructive of health, whilst the sanitary condition of the workrooms is to the last degree defective. To these considerations it must be added that this question embraces the well-being of many thousands of women in the beginning and prime of life; the total number of milliners and dress makers of all classes in the United Kingdom amounting to 370,218." My friend Mr. J. Edward White, the Assistant Commissioner, describes the workrooms of our seamstresses as follows:—"The general appearance of the houses in which these needlewomen live is very miserable." Speaking of manufacturing establishments he says, "Some of their rooms are so filled with workers without the admission of sufficient fresh air as to make the air in them sensibly unpleasant, and some, as I noticed more particularly in Dublin, are in a rough and dirty state. One gloomy room, about 14 feet by 15 or 16 feet, rough measurement, though not low, with twenty females in it and the fireplace carefully blocked up, had a very close smell. In another factory the employer said that they had no need of fires, as so many sat together in each room." He was sparing of coals, while lavish

of human health and life, through ignorance of the laws of these blessings, or perhaps from want of direct legislative interference. In one room in Stephen's-street twelve or more shirt-makers worked, and it was also used as the sleeping place for the employer, her son, two grown daughters and grandchild. We have reason to be thankful that in Mr. White's report there is little evidence of that moral degradation and educational darkness which is shown to prevail in some other parts of the United Kingdom, and which so horrified the public when comments upon and extracts from this valuable Blue Book appeared in the public press. From some statistics appended by Dr. Letheby, it appears that more than twice as many deaths by consumption and fever (of all diseases the most accurate sanitary tests) occur among needlewomen than among other females of corresponding ages in the City of London, and that, while the mean age at death of the latter is 29·6, that of the former is but 24·7.

To omit moral and educational considerations, we must conclude that the general physical result of the over-crowding, want of fresh air, irregular and scanty meals, and extreme length of the working hours, upon most of the young persons employed in those trades not yet regulated by law, are great proclivity to all diseases without power to bear up against them, and especial liability to zymotic complaints and consumption.

Another most desirable measure is a registration of diseases, especially those which are preventible—namely, the zymotic and tuberculous classes, and infantile convulsions. Such is at present carried out by the Manchester and Salford Sanitary Association; was conducted with the greatest benefit by the Medical Officers of Health in London, until the authorities considered the system too expensive; and might in Ireland be achieved better than perhaps in any other European country by our admirably organized poor-law medical staff.

In conclusion, I would express the hope that any Act with which we may be favoured may be comprehensive, for legislation in sanitary matters has been hitherto usually patchwork; for example, in 1853, one member brought in a "Bill for the Prevention of Glanders," whilst the various Factory Acts and and the Bakehouse Act concern merely a few special employments. I profess myself unable to account for the remarkable exclusion of Ireland from many salutary statutes which should be universal in all parts of a United Kingdom. I presume even our most independent patriots should rejoice to see our country Anglicized in this respect at least. Perhaps it may be that "politics," in the usual narrow sense of that word, are more attractive to orators and more exciting to constituencies, than the health and well-being of the people which the lawgivers of ancient empires made their chiefest care.

DISCUSSION.

Dr. Hancock thought that the government should be delighted in assisting local bodies in carrying out those sanitary regulations which were so necessary for the health of the large populations of cities and towns.

Mr. Whittle urged that a responsible officer should be appointed to see after those sanitary regulations. He believed that the duty of attending to sanitary matters should not be left to the public, who might look almost indifferently at the presence of evils, the removal of which could best be effected by a person appointed by government.

Mr. John M'Evoy observed that in those towns where sewage was neglected, where there was an insufficient supply of good water, and where there were overcrowded dwellings in particular localities, disease largely prevailed. He thought there should be registration returns as to the sanitary condition of the different districts of the city.

Dr. Burke (Medical Registrar), said that Dr. Mapother was the first officer of health appointed in Ireland, and he had certainly initiated his duties in an admirable manner. The death rate of Dublin was more apparent than real. There were two large workhouses in Dublin. In the South Dublin Union, the week before last, there were 3,500 people, and, of these, 2,000 and some hundreds were sick and in bed. Many of these people did not belong to Dublin —most of them came from the country and entered the workhouses, and the mortality amongst them went to make up the apparent death rate of Dublin. He thought that Dr. Mapother's assistance in reporting the localities where disease prevailed would be valuable in improving the sanitary condition of the city. He showed what was done in this way by the late Dr. Speedy, who week after week reported on the unhealthy condition of one of the streets in this city, and ultimately got that street thoroughly cleansed.

Mr. Stoney suggested that Dr. Mapother should give the heads of a bill which he would propose, to carry out what he had in view.

Mr. R. P. Clokey observed that the useful papers read on a previous evening by Mr. J. Hancock, and on that occasion by Dr. Mapother, proved that we had already at command valuable machinery for carrying out sanitary regulations and improvements. While he was prepared to admit that our sanitary acts might be consolidated and amended, he believed that the powers at present in existence were not sufficiently known, and he trusted that Dr. Mapother would kindly apply himself to bring before the public the importance of carrying into effect the useful provisions contained in the Nuisances Removal and Diseases Prevention Acts, the Common Lodging Houses Acts, and other measures applicable to Ireland.

Mr. Alfred Webb said that some important public acts were restricted to England and some to Scotland. He thought that when such acts were introduced into the legislature, they should be made to apply to all portions of the empire.

The Chairman (Mr. Haughton) said that a detailed statement of dangerous diseases and of the localities in which they prevailed should be kept, but such statistics would be useless unless they could be made available for the lessening of those diseases which so much increased the mortality in cities and towns.

V.—*On the Policy of Extending the Provisions of the Towns Improvement Act (Ireland), 1854, to the Towns still under the old Paving and Lighting Act, 9 Geo. IV. c. 82.*—By John Hancock, Esq., J.P.

[Read Tuesday, 31st January, 1865.]

The Towns Improvement Act of 1854 was a very important step in our local legislation. It gave to the towns throughout Ireland the power of obtaining from the Lord Lieutenant and Privy Council, without the expense of a private act of parliament, a large number of the provisions of the commissioners' clauses and towns' improvement clauses acts which had been passed for England and Wales in 1847. The great value of this act is shown by the extent to which it has been adopted, 76* towns having in ten years come under its provisions, whilst at the end of 25 years only 55 towns had adopted the provisions of the old paving and lighting act of George IV. The act of 1854 left it optional with towns already under the paving and lighting act of 1828 to accept its provisions, but expressly provided that it should not be lawful for the Lord Lieutenant to call any meeting for the purpose of extending or applying in any way the provisions of the old act after August, 1854; and so favourably has the new act been viewed by the old commissioners that 37† towns out of the 55 under the old act have adopted its provisions; the remaining 18 towns‡ are the following:—Parsonstown, in the province of Leinster; Bandon, Cahir, Clonakilty, Fethard, Tralee, and Youghal, in the province of Munster; Armagh, Banbridge, Downpatrick, Dungannon, Enniskillen, Lisburn, Monaghan, Moy, Newry, Omagh, and Strabane, in the province of Ulster. My object in now addressing you is to contrast the leading points of the two acts, with a view of inducing the above-named towns to co-operate with the other towns of the country, and thus have a uniform system of municipal government throughout Ireland. Under the recent act the proposed boundaries of the town applying for its introduction are submitted to the Lord Lieutenant for approval, and are published in the *Gazette* before the ratepayers are called on to vote for the introduction of the Act, and no subsequent alteration in boundaries can be made without the consent of his Excellency; whereas under the former act the boundaries are settled by the commissioners after the introduction of the Act, and there is no appeal from their decision. It is obviously much fairer that all parties should know not only the powers sought to be introduced into a town, but also the area over which they are to be exercised, before deciding whether the act should be adopted. Under the old law the mode of rating is graduated, and houses under £5 yearly value are exempt. The scale of rating is 6d. per £1 from £5 to £10; 9d. per £1 from £10 to £20; and 1s. per £1 on £20 and upwards. Under the Towns' Improvement Act the

* Now 80. Newbridge, placed under act 10th February, 1865; Newtownards, 6th March, 1865; Newry substituted new act for old one, 6th March, 1865; and Banbridge, 14th June, 1865, leaving only 16 towns still under 9th Geo. IV. c. 82.

† Now 39. See note (*).

‡ Now 16. See note (*).

rating is uniform, and all houses under £4 value are rated upon the owner or immediate lessor. It appears that nearly one seventh of the property escapes taxation under the old act, and that a 9d. tax, under the new act will produce more money than a graduated tax, commencing at 1s. and ending at 6d. [Having pointed out the differences between the two acts regarding works, qualification of commissioners, &c., he proceeded.] Powers are given to enforce cleanliness, not only in streets, courts, and lanes, but in back-yards and premises, by removing contents of cesspools, &c., and by the erection of dust-boxes and other conveniences. The levels of all new streets must be settled by the surveyor of the commission, and the width of the carriage way must be at least 30 feet. Spouts are to be affixed to houses, and ruinous and dangerous buildings may be taken down. Party walls must be run up through the roofs, so as to prevent the spread of fire. No further buildings can be erected until the plans for supplying fresh air to such buildings have been approved of by the commissioners. The sale of unwholesome and adulterated food is prohibited under severe penalties, and the Inspector of Nuisances is authorised, at all reasonable times, to visit the shops used for the sale of butcher's meat, poultry, or fish, and to seize such as is unfit for food, and bring it before the chairman of the commissioners for adjudication. No new offensive trade can be commenced and carried on without the leave of the commissioners, and gunpowder is also under control. In the case of contagious diseases being prevalent, houses can be entered, cleansed, and whitewashed, upon the certificate of two medical men, and the expense charged to the occupiers or owners. Slaughter-houses must be cleaned weekly, and are at all times subject to the supervision of the inspectors. No new slaughter-houses can be built, or additional houses used for slaughtering, except in situations approved of by the commissioners. Sewers must be cleansed and kept in order, and drains made into them from yards and dwellings. When a particular district requires a new sewer, the commissioners can construct one at the expense of the district; they may borrow money for the purpose, spreading the repayment over thirty years. There is a clause in the old act authorising sewers to be made, but no mode of obtaining funds is given, and the ordinary rate of taxation is not more than sufficient for ordinary purposes; there is no clause in the old Act for a special sewer rate, and it is unfair to charge upon the whole town an expense benefitting only a portion of it. Damp and dark cellars are not to be used for human habitations. Lodging-houses must be registered, and the commissioners have power to make rules for promoting cleanliness in such places. Houses cannot be built after the adoption of the new act without notice in writing to the commissioners, accompanied by a plan showing the level at which the foundation of such a house is to be placed, and making due provision for the proper drainage of such house. Hackney cars must be licensed, and the commissioners can make rules for their management, and fix fares for short distances not exceeding four miles. The drivers must be licensed, and impropriety on their part can be punished by fine or withdrawal of license.

These regulations are useful, and will prevent passengers arriving by rail from being subjected to annoyance or imposition. The commissioners are also empowered to make similar regulations as to bathing-machines, boats, and porters. The bye-laws in all those cases must be approved of by the Lord Lieutenant after public notice. If the existing waterworks afford a sufficient supply of water, the commissioners are not authorised to interfere with them; but if the supply be insufficient, and the deficiency is not remedied after due notice, the commissioners are authorised to take measures for procuring a better supply, and may levy a tax of an additional 6d. in the £1 on the property of the town for such purpose. The powers under these clauses are considerable. Baths and wash-houses may be erected, and public open bathing-places may be maintained. The commissioners also provide places of public recreation anywhere within three miles of the centre of the town, and lay out and improve such grounds for the more convenient use and enjoyment thereof. They may also provide a public cemetery, and make such bye-laws for the management of it as will meet with the approval of the Lord Lieutenant. The commissioners may contract for three years with any gas company for lighting the town with gas; and in the event of any disagreement as to price, may avail themselves of the arbitration clauses of the land clauses consolidation act, 1845. This is an excellent clause. Gas companies in small towns have a virtual monopoly, and commissioners have not the knowledge requisite to determine whether the gas company is asking too much or not. No such precaution exists in the old act, nor does it take cognizance of or attempt to prohibit the keeping of improper houses, loitering in the streets for improper purposes, using disgusting language, disturbing the town at night. Some of those offences could be punished under the general law, but all are punishable under the new act, and the fines leviable would go to the funds of the town. Street gambling of all descriptions is punishable by imprisonment. At present in many towns the assessment is not sufficient to meet the expenses, and many things have to be provided in other ways. Under the new act the assessment would amount to a larger sum extending over all houses at a uniform rate, and the town would benefit by the fines and license fees. There is no provision for audit in the old act: the accounts are to be printed once a year, and furnished to any persons paying a reasonable price for printing. Under the new act the commissioners must make up their accounts one month before the annual general meeting in June, and allow them to remain open to the inspection of the ratepayers without charge; and at the annual meeting two auditors are to be appointed by the ratepayers, from householders qualified to be commissioners; and these auditors have full power to examine and sign the accounts if correct. Any person may appear before them and object; if the objection is well founded there is an appeal to the assistant barrister, so that every precaution is taken to prevent malversation of funds, and every facility given to ratepayers to ascertain how the rates are expended. The annual audit in June and the annual election in October practically bring

the commissioners and ratepayers face to face twice a year, and afford ample opportunity for the expression of opinion as to the management of the town. Under the old act the ratepayers and commissioners meet but once in three years. The town of Lurgan was one of the first to adopt the new act, and I have served as chairman under both acts, and recollect the condition of the town before the introduction of either. I can bear testimony to the improvement produced by the act of 1828 on the previous state of affairs, and the still greater improvement arising from the act of 1854. Such being the facts of the case, the proposition which I venture to submit is, that the time has arrived when the salutary provisions of the act of 1854 should be extended to the few towns still under the old act of 1828; and that the public opinion of this country should be brought to bear in these towns that lag behind in the march of improvement of our local institutions; that some effort should be made, by the public discussion of the question, to induce the inhabitants of them to take the very simple step necessary to give themselves the benefit of the reforms which have been introduced into so many other towns in Ireland within the past ten years. Whilst endeavouring to show the advantages of the act of 1854 over that of 1828, I must not be understood as holding it to be perfection; nothing human is, and this act, in its turn, will require amendment. One grave defect common to both acts is, that the commissioners are not incorporated. Now that they are authorised to hold lands for public parks, cemeteries, and other purposes, it would facilitate their operations much if they had the power and authority of a corporation. Other defects will, no doubt, suggest themselves to you; but the first point is uniformity of action over the country, and the increased experience of so many towns will greatly facilitate and ensure improved legislation when the day of amendment arrives.

DISCUSSION.

Mr. Jackson said that, having had some experience of the working of the act as Chairman of the Town Commissioners in Bray, he did not think it went far enough in some respects. For instance, it was defective in reference to the regulation of markets, and also in reference to mendicancy. In these and other respects he hoped to see the act amended.

Mr. James Haughton wished to know if the act was permissive. If that were so, he would be glad to know why those towns which had not adopted it did not do so. It appeared to him to be a fallacy to say that the expenses of the act did not fall upon the poor householders because the expenses were paid by the landlords, for they all knew that if the tenant did not pay the taxes directly, he paid them in the shape of increased rent.

Mr. Clokey said the paper was a most instructive and valuable one. He never knew until he heard the paper read there that town commissioners possessed so much power which was not exercised, but could be most beneficially excercised. He would be glad to see the act amended, so as to give the commissioners power to regulate the names and numbers of streets, terraces, &c.

Mr. J. Hancock, in reply to Mr. Haughton, stated that the act was permissive, and could be adopted by the inhabitants, on petition to the Lord Lieutenant. The reason certain towns had not the act extended to them was on the ground of taxation. With regard to fairs and markets it was better they should be perfectly free. The committee had power to regulate the thoroughfares of fairs and markets. The lodging-house clauses were in force in every town in which there were 3,000 inhabitants instead of 10,000, as stated. With respect to mendicancy there was ample power for the prosecution of beggars, but the public could not be induced to put these powers in force. The real reason why the eighteen towns under the old act did not seek to come under the new act, was that, under the old act houses under 5*l* were exempt from taxation. After some further explanations, Mr. Hancock concluded amid applause.

The Chairman said the Society and the public must feel greatly indebted to Mr. Hancock for his very clear and useful explanation of the act.

VI.—*On Strikes with respect to Hours of Labour.*—By W. Neilson Hancock, LL.D.

[Read Tuesday, 25th September, 1865.]

In old times, when business of all kinds was carried on in small establishments, the hours of labour were regulated by the hours kept by the employer and his family, who generally resided at the place of business, and personally superintended the work. The old hours in all common occupations were ten hours for work, with two hours for meals, twelve in all—usually from six a. m. to six p. m. Such I believe to be the natural hours for common occupations, allowing enough of time for sleep and for domestic or social life. The time for sleep being limited by natural laws, the effect of extending the hours of labour beyond the ten hours' limit, is to encroach on the time a man should devote to the discharge of the duties that he owes to his wife, to his children, to his parents, his family, his friends, his neighbours, his fellow-tradesmen, and his fellow-citizens. Hence the extension of hours of labour beyond their natural limit of ten hours destroys the character of the labouring man, and no increase of wages compensates for this injury to the workman and to all dependent on him or connected with him.

When capitalists get up large establishments like factories, and have a large capital sunk in machinery, they are tempted to make the machinery work as many hours as possible out of the twenty-four. In proportion to the size of the establishments, the capitalist is removed from the workmen; he knows less about them and cares less about them. He ceases to regard them as human beings with large family and social duties to discharge, but simply as animated machines. The capitalist is thus led to offer extra wages for

extra hours, to induce the men to overwork; and not the men only but women and children. It was to check this evil that the agitation for Factory Legislation commenced. Philanthropists observed the extent to which women and children were sacrificed to the greed and thoughtlessness of capitalists and of the more selfish of the working classes. They interposed, and got the hours of labour limited first to eleven and ultimately to ten hours.

This legislation met with the most determined opposition of the rigid economists of the *laissez faire* school, preaching non-interference. Now what the philanthropists were doing was not interfering with labour, but preventing labour interfering with domestic and social life. The factory limit of sixty hours a week, ten and a-half hours for five days, and seven and a-half on Saturday, and all between six a. m. and six p. m., corresponds practically with the natural hours I have above referred to; the only difference being half an hour a day extra work for a one-third holiday on Saturday. These hours have prevailed for nearly twenty years. The protection the factory legislation affords has been extended frome time to time to different manufactures by ever increasing majorities in the House of Commons; and on a recent occasion Mr. Roebuck, M.P., one of the old opponents of factory legislation, averred that he had completely changed his opinions, and that he had found all that the manufacturers had said about being ruined if the ten hours' system was carried, was a mistake.

Towards the close of the session of parliament, 1861, Lord Shaftesbury obtained a commission to inquire into the employments in which women and children were engaged, with a view to the extension of the factory legislation to all such employments. The factory legislation does not in terms protect the labour of men, but in fact it does so; for the restriction on the hours of labour of women and children limits the hours of the machinery working profitably, and so practically limits the hours for the men.

If ten hours be the natural limit, it may perhaps be asked how I explain the nine hours' movements in London in the building trade. This I believe arises from the great distance men have to go to their work at the building trade in London. The new buildings are in the newest and best parts of London; the men live in the worst. Now if a workman in London has to go a mile and a half or two miles more to his work than a similar workman elsewhere, this implies half an hour more in the morning and half an hour more in the evening from the man's home, so that he cannot have the same time for the necessary paramount and dignified purposes of domestic and social life as the working classes have generally, unless he establishes nine hours instead of ten as his working time. The masters' proposal of paying by the hour is only a plan of bribing men to sacrifice their domestic life and to neglect their various duties for the sake of gain. In the London strike in the building trade the men were in my opinion in the right, and the masters wrong. The hours in business of any kind above the lowest *should* be less than ten hours, because those employed, besides their domestic and other duties, require time for a higher cultivation of their minds, to read newspapers and books;

and, in the case of wealthy men, to discharge public offices, and to have time to qualify for public life. The regular working hours should consequently be less than ten hours. The demand made by clerks and other employées for early closing is therefore of the greatest importance in a moral and social point of view. The precise number of hours, less than ten, is a question for each trade, depending on the amount of information and mental qualification required by the men.

It is often urged that the matter can be left to regulate itself; but experience shows that unless the hours be fixed by public opinion and some uniformity maintained, selfish men will try by keeping open for long hours to get business from those who close early. Those who adopt early closing become jealous and dissatisfied, and try to induce their employées to stay on. So a rivalry or bounty on encroaching by long hours on the labourer's domestic life is created.

In the view I take of the matter I think the question is primarily a moral and social question, and not an economic one. It follows then that strikes as to the hours of labour are different from strikes as to the rate of wages, and that, from the high moral and social interests involved, the public should lend their aid in the cases beyond the operation of the Factory Act, by strengthening the formation of a strong public opinion in favour of reasonable and moderate hours of labour.

DISCUSSION.

The Chairman said he was aware that the builders of London insisted on limiting the period for labour from ten to nine hours a day. In the *Daily Express* of the 13th inst. he read an account of a strike which had taken place in Carlisle, which, so far as the bricklayers were concerned, was compromised by the masters withdrawing the hour system, and by the men being allowed walking time to all jobs outside the city. This case afforded a strong corroboration of the views put forward in Dr. Hancock's paper.

Mr. Gregg thought, from his intercourse with workmen, they would ever be found willing to listen to reason.

Colonel Torrens, as a considerable employer of labour, found that he could always get as much work out of a man in eight or ten hours as he could in twelve.

Mr. M'Donnell was of opinion that the legislature should be very cautious in dealing with this subject.

VII.—*The Functions of Grand Juries in Criminal Cases.*—By James H. Monahan, Esq.

[Read Tuesday, 20th June, 1865.]

The various branches of our criminal procedure are necessarily closely interwoven. The necessity or the usefulness of a particular step in the complex process by which criminals are brought to justice, is often dependent on, and inexplicable without, reference to the

mode in which previous and subsequent stages of the investigation are conducted. It is therefore impracticable to form a judgment as to the value, or uselessness, of any detail of the structure of our criminal procedure, without having previously acquired a conception of the entire procedure—from the accusation to the conviction—as a whole. And in order to confine the discussion of such a subject within reasonable limits, we must assume that the principal features of the rest of the machinery are to be regarded as practically unchangeable.

Thus, it is easy to conceive the existence of a system of tribunals, having cognizance of criminal offences, sitting in continual session from day to day; having jurisdiction over offences committed, within a limited area of such convenient size that access to them, in each particular case, might be easy and without delay; at once ready to take cognizance of accusations, and empowered to inquire into them—to arrest the accused, and after such short interval only as may be necessary to collect proofs and to give the accused a reasonable time to prepare his defence, to investigate the case, decide upon it, and acquit the accused or award him proper punishment.

Even in such a state of things, it would no doubt be necessary for the safety of innocent persons falsely or maliciously accused, that the tribunal should excercise a discretion as to receiving an accusation and putting it in a train of enquiry, or rejecting it at the outset. Some satisfactory primâ facie proof would inevitably be called for before the accused could be arrested or publicly arraigned; otherwise the peace of the most virtuous citizens might be disturbed and their happiness destroyed by any slanderer. But still, assuming the primâ facie probability of the truth of the accusation to be established, and the case to proceed to trial, the process from the commencement to the close would be a continuous whole. The tribunal whose conscience was originally satisfied that the prisoner had probably committed a crime, having finally to determine—on the proofs being finished—that he actually was guilty, or else that the first impression produced on it was erroneous: the prelimary proofs must naturally have weight in the final adjudication, and the ultimate hearing of the case would easily take the form rather of a public justification of the conclusion of guilt already arrived at, by recapitulating and repeating in public the evidence already taken and arranged in private, than that of an independent investigation of the facts, on evidence new to the tribunal whose duty it might be ultimately to determine the case.

The criminal procedure of France and most other European countries approaches more or less nearly to this type, varying from it, however, in a multitude of details which I need not dwell on. With us, however, a widely different system prevails; the preliminary investigation and the final trial are kept widely apart. Offences of any gravity are dealt with by tribunals not sitting continuously, but assembling at comparatively distant intervals. Though of course our judges are not arbitrarily removable, yet, when a judge goes circuit, he tries criminals under the authority conferred upon him by the commission which is issued for each circuit only. Omitting the

special arrangements made for large cities such as London and Dublin, these commissions are, in Ireland, issued usually but twice a year. The ordinary tribunals having authority to try the gravest offences committed over the whole of the country district in Ireland, meet only twice in each year for a short time; in England, but three times. Cases of considerable gravity, but not the very gravest, can be tried at quarter sessions, held four times in the year. Thus, for the latter class there are six courts held in each year at which they can be tried. And every case brought before any of these courts must be thoroughly established from beginning to end, without any direct reference to the proofs made before the final trial commences. The previous steps in the process which have led to the prisoners being arraigned before them, go for nothing. The proceeding is, strictly, a trial of a completely new case, not merely a publication of a case already virtually finished and determined.

I have no need nor space to dwell on the comparative advantages of these features of our system over the method of foreign tribunals. At all events, no one wants, I believe, to change them much, and for our present purpose, to keep within reasonable bounds, we assume that they are not likely to be much altered. Two consequences follow from this, which we must note before proceeding. The one is highly advantageous to the accused, and, I think, to the ends of justice. The other is an unavoidable hardship to every man charged with a serious office. The circumstance that the whole case, when it is finally tried, is treated as a new case, to be proved by independent evidence, prevents errors or miscarriages in the earlier stages from having any appreciable effect against the prisoner, on the ultimate result. The length of time intervening between the sittings of our criminal courts, must invariably lead to a longer preliminary detention of the accused than is at all required for the purpose of arranging the case against him, and giving him an opportunity of preparing his defence. And, in some instances, this preliminary incarceration, during which the prisoner, his guilt not having yet been proved, is assumed, according to the maxim of our law, to be innocent, may be extended over many months. This is certainly a hardship to the accused; but one which cannot be avoided. For of course, in some cases, to effect the ends of justice at all, a man accused with primâ facie probability of the commission of a serious crime must be imprisoned until his innocence is established.

Thus the duty of deciding on the likelihood of the truth of criminal accusations becomes, with us, one of peculiar importance and delicacy. On the proper discharge of this duty every one's safety greatly depends. Our law casts this responsibility in the vast majority of cases on the justices of the peace. With them, as a general rule, rests the authority of permitting or refusing to permit the machinery of the criminal law to be put in motion. Their conduct in this respect is governed by a series of enactments, which have, at all events, the advantage of being nearly all collected for them in a tolerably intelligible code, reduced to a compendious form. Whatever other faults may be attributed to the rules that govern magistrates in the performance of their delicate duties, I

think that no one can impute to them that of bearing too hardly on the accused person. In this, as in every other stage of a criminal proceeding, our law, almost to a fault, throws round the prisoner every possible protection consistent with any reasonably efficient measures for the repression of crime.

The magistrate acts on sworn testimony, taken in the presence of the accused, and reduced to writing. In the great majority of cases every step in the proceeding is guarded by the protection afforded by complete publicity. The accused is free to obtain the best legal assistance; to cross-examine the witnesses; to test the evidence against him. The prisoner may put forward any defence he pleases; but he is carefully warned against making any statement to injure himself. He cannot be interrogated. He may examine witnesses on his own behalf. The magistrate is bound not to commit the prisoner for trial unless a prima facie case be made out against him by witnesses entitled to a reasonable degree of credit. No course more lenient to the accused can well be imagined than that prescribed by these regulations.

Assuming that, under these circumstances, a primâ facie case of guilt is established, it is absolutely necessary for the safety of society that the accused shall be detained; or that, in the less heinous cases, sufficient precaution be taken by bail to ensure his appearance at the trial.

And accordingly, the decision of the magistrates (subject to certain check and control which I need not here dwell on) determines the momentous matter for the accused, that he must remain for a time under the imputation of probable guilt; that he ceases to be a free citizen and, in grave cases, that he must suffer imprisonment until the time of trial arrives.

When that time comes, the prisoner has suffered the whole of the hardships inevitably incident to detention preliminary to trial—and which must perhaps often be endured by innocent sufferers from the fallibility of testimony. The charge against him and the allegation of the witnesses in support of it are certainly known to his own circle and to those whose good opinion is of most importance to him. If the crime be serious, the evidence has already been published by the press and has been read by thousands. His social existence has been interrupted—he has tasted all the bitterness of shame and suffered all the agony of suspense.

I should think that an innocent man, in such a position, must long for his public trial, and count the days till the time shall come when his case shall be fully, fairly, and publicly heard; when the evidence of the witnesses establishing his innocence shall be as widely published as that of those who incriminated him, and his fair fame re-established by an acquittal as open as the accusation. At length this wished for time arrives. The assizes have begun, and the trial will immediately take place. But, before this public vindication of a character wrongfully assailed can commence, a proceeding is had immediately concerning us.

There comes into court a number of persons summoned by the sheriff. They are resident in, or have at least some local connec-

tion with the county; but they need have no particular qualification for the duty they are about to discharge, beyond the moderate one of not being peers, aliens, traitors, felons, nor attainted. It is said that they ought to be freeholders; but no one knows to what amount, and it is at least doubtful whether they need be freeholders at all. By a custom enforced by social usage, but not sanctioned by any positive law, the sheriff usually summons the most considerable commoners of the county whom he can get to come, and arranges their names on the list, or panel, with reference to the social position of the gentlemen called, the greatest man going first. I have heard that, not very long ago, in the west of Ireland, this duty used to involve the sheriff in no slight personal risk; inasmuch as gentlemen, considering themselves not to have been called in their proper priority, occasionally, in accordance with ancient usage, challenged the sheriff to mortal combat; an invitation which of course that officer could not decline.

Of the gentlemen thus summoned, a number not less than twelve nor more than twenty-three, so that twelve may always be a majority, are sworn to try the accused. The number thus sworn constitute the grand jury. In Ireland, they have very important duties to perform connected with the local taxation and management of the county. With this branch of their business we have, now, no concern: let us follow them in the discharge of their functions in criminal cases. In order fully to appreciate the character of these functions, let us recall for a moment to our minds the stage of the proceeding at which we have arrived. The preliminary investigation and the preliminary imprisonment are now at an end. All the evils consequent upon being publicly accused of a criminal action have already been endured by the prisoner. All the mischief which can ensue from an incautious committal by the magistrates has already been accomplished and is utterly irreparable. And, as we have seen, the whole case is, now, about to be reinvestigated from beginning to end by a tribunal which will take no note of what has been done before the magistrate—at least none that can fairly be said to bear hardly on the accused. It is at this precise point, of all others, that the grand inquest gravely sets about the task of reconsidering and reviewing the decision of the committing magistrate. The function of the grand jury is to hear the witnesses for the prosecution, but not any on behalf of the prisoner: for, says Blackstone, "The finding of an "indictment is only in the nature of an inquiry or accusation, which "is afterwards to be tried and determined; and the grand jury are "only to inquire upon their oaths whether there be sufficient cause "to call upon the party to answer it." In short, they are now, at the eve of the public final trial, to repeat what has been finally and irrevocably done by the magistrates perhaps months previously; to reiterate an operation which has been finished long before, and which, supposing it to have been erroneously conducted, has worked every evil result which it is capable of causing. The grand jury may perhaps shelter a guilty man from punishment; they can never save an innocent man from the misfortune of having been wrongly committed.

And the method of procedure which they are forced to adopt, violates, in almost every salient detail, those conditions which we have grown accustomed to regard as essential to the sound and healthy exercise of judicial functions.

Most men are now agreed that the full and complete publicity of legal proceedings is the best safeguard, both of the credit of the law and of the lives and liberties of citizens. The grand jurors hear and judge in a private room; they are bound by oath to keep their counsels secret. It is contrary to the humane maxims of our law to take evidence against a man in his absence; the grand jury never permit the prisoner to be present at their investigation. While we all feel the value of the system of ordinary trial by petit jury—when the bulk of the citizens, with minds unwarped by legal rules and unfettered by technicality, take their full share of the important duty of deciding the ultimate issue of the lawsuit—still those most familiar with it know best how essential it is that juries, while left undisturbed in the exercise of their proper functions, should yet be guided and assisted by men with practised brains. The grand jury is wholly deprived of any professional assistance. They sit in a room apart, the witnesses are sent in to them, and they must shift as best they can to get perhaps unwilling witnesses to tell their tales in a reasonably intelligible manner.

It is not then surprising that we are told that when crimes are hushed up, when evidence is bought off, the scene of perjury is neither the police office nor the sessions court, that it is laid in the chamber of the grand jury. We are not astonished to read in the recent charge of a judge to a grand jury in England; "How, gentle-"men, you make your way among these various impediments and "perform your task with (comparatively speaking) no little da-"mage to the interests of justice, I am not quite able to explain; "but most assuredly, the praise of doing less harm than might "reasonably be expected is the only compliment which existing "arrangements permit me to offer for your acceptance." In an article written by Lord Denman, after referring to the word "jury" as being so musical to English ears, and its functions as beyond all doubt one of the best and noblest securities for all the rights of social man, he goes on:—"But the generous institution here "characterised corresponds in no single feature with that anomalous "excrescence attached to courts of criminal law in England, under "the name of a grand jury. That is not an open but a secret tribunal; "the accused has no voice in its formation; no challenge against "his worst enemy, who may possibly direct its unwitnessed deli-"berations. The legal points that may arise are clandestinely debated "and decided without the assistance of any known minister of the law. "In their private chamber, the grand jurors hear the testimony on "behalf of the accusation only, subject to no cross-examination or "contradiction. In a spirit directly hostile to the most cherished "principle of English law, every thing takes place with closed doors, "and in the absence of the party to be affected. Finally, as if to "complete the contrast, the verdict need not be unanimous or even "the opinion of two thirds: for a bare majority, twelve to eleven, is

"sufficient either to put a party on his trial or to stifle the most "important investigation * * * * When they find the bill, they "only express the opinion already adopted and acted upon by the "committing magistrate, after a much more satisfactory proceeding. "Is not this superfluous? If they differ from him, and, by rejecting "the bill quash the charge, they can hardly clear the suspected "character, but may do irreparable injury to public justice." Perhaps we can now understand how it came to pass that the grand jurors of the Central Criminal Court so long ago as the year 1852, expressed their unanimous opinion that "a grand jury increases "the expense and adds to the delay of criminal prosecutions. It "affords an opportunity for corruption and for tampering with pro-"secutors and witnesses."

These authorities are many and weighty, and in truth they do no more than justify the anticipation which one cannot help forming on a short glance at the nature of the functions exercised by grand jurors in criminal cases, and the methods pursued in exercising them. I imagine that if the establishment of the grand jury, as an addition to the rest of our criminal procedure, were now, for the first time, proposed as an improvement in our system of law, the whole project would inevitably be rejected—branded as an attempt to introduce a certainly useless and probably dangerous anomaly into our legal system.

Grand juries, however, are they say at least as old as the laws of King Ethelred, and the directions given by Bracton, (who wrote in King Henry the Third's time) for the guidance of justices in eyre, have an almost startling resemblance to what happens on every circuit to this day. He says, "And first are read the briefs which give them authority." This exactly corresponds to the "opening" of the commission with which each of the assizes going out next month will commence. Perhaps some of the charges to the grand jury may not be far off from this. "And then the senior and the more discreet "of the justices shall deliver a discourse upon the advantages of keep-"ing the peace, and a lamentation over the violation thereof 'per "'murdritores robbertores et burglatores.'"

In fact the grand jury is but a relic of the great system of inquest by jurors which, though adopted from the old Saxon system, was so largely used by the Norman kings in conducting the government of the country, and which, according to Sir Francis Palgrave, had so marked an effect in limiting the royal prerogative in every branch of its exercise—the system through which it came to pass that "The thunder of the exchequer at Westminster might be "silenced by the honesty, the firmness and obstinacy of one "sturdy knight or yeoman in the distant shire." The grand jury seems to be even an older institution than the petit jury—or at all events to have sooner intervened in almost every criminal case. The earliest date at which we have an intelligible conception of how a criminal trial was conducted in England is the 5th Richard the First, (1194). The course was this: On the presentment of the malcredence or violent suspicion of a jury, which to a certain extent corresponds to the finding of the bills by the grand jury, ap-

peal was had to the barbarous expedience of the ordeal: in ordinary cases, and as a general rule, the case was not submitted to a second jury. The accused must forthwith clear himself by the ordeal of water or the ordeal of fire. In some special cases—it is not now easy to ascertain their precise nature,—in lieu of the ordeal,—the accused was, as a matter of favour, of purchase, or of privilege, brought before a second jury summoned from the neighbourhood of the place where the crime was alleged to be committed. These, though they were in fact rather witnesses than jurymen, are the lineal ancestors of our petit jury.

By the 18th canon of the fourth Lateran Council in November, 1215, trial by ordeal was abolished throughout Europe. The mandate of the church was obeyed in England, but the authority which prohibited the ordeal substituted no other mode of trial in its place: and the system of having recourse to a second jury, after the malcredence of the first, was, from default of any other mode of trial, extended to all cases. And thus it would really appear that the trial by jury—that word so musical in English ears—that palladium of our liberties—owes, at all events, much of power and general establishment to a decree from a quarter whence few Englishmen, perhaps, think it likely that such benefit could emanate.

However, this is far away from our immediate purpose. Enough has been said to recall to our attention the great antiquity of the institution with which we are dealing. This no doubt accounts for the strenuousness with which some persons still supported it. For its venerable age enlists on its side that sentiment of respect for things ancient which has so high an influence on men's minds and is of such real use to society. But we must remember that respect for antiquity and dislike of change must be indulged within reasonable limits only—and that time by no means stands still; "that," as Bacon says, "contrariwise it moveth so round, that a froward retention "of custom is as turbulent a thing as an innovation; and they that "reverence too much old times are but a scorn to the new."

I have now stated the more salient vices of the system of submitting bills of indictment to the grand jury, omitting designedly some matters of detail which appear to me to be of comparatively minor importance. I have neither cared to dwell on the hardship which may arise when bills of indictment are sent before the grand jury, without any previous investigation before the magistrates having taken place; such cases may no doubt occur, and the defects in the method of procedure governing the deliberations of grand juries cannot fail to expose the accused, in such cases, to great hardships. But, in this country at all events, such incidents are so rare as hardly to merit discussion.

Having thus stated what appears to be the strength of the case against "the functions of grand juries in criminal cases," it is but right to look at the reverse of the shield—to listen to the more prominent of the reasons put forward by the apologists of the system. It is said that it conduces to the ends of justice that grand juries should intervene to ignore bills; because thus a criminal against whom the

evidence is not complete, when the time for trial comes, does not necessarily escape altogether as he would if put upon his trial before the petit jury and acquitted. For, it is said, though the grand jury ignore the bill, and thus enlarge the prisoner, he may, on the discovery of fresh evidence, be again arrested and again indicted. Now, no doubt, such cases may possibly occur; but they are so very rare as really practically not to be worth considering. In the case of offences of minor importance it is not likely that the matter will be taken up again. In the more serious cases it is highly improbable that it ever can be—for the discharged prisoner is either guilty or not guilty. If he is not guilty, it is vastly improbable that the false charge, having once failed, will be repeated—it certainly is not desirable that it should. If the prisoner is in fact guilty, after such a narrow escape, he will probably take steps to withdraw himself from the reach of justice. And experience enforces this anticipation. Cases of prisoners a second time indicted after a grand jury has once ignored the bill, are so very rare that in forming a practical judgment on the subject, they may fairly be left out of account. And, having regard to the privilege of postponing the trial of serious criminal cases, usually conceded to the crown and largely exercised in important cases, the shadowy help to justice thus given by grand juries is certainly not needed.

Another and I think a better argument in support of continuing the functions of grand juries in criminal cases is one founded on the social advantages gained by inducing that higher class from which grand jurors at the assizes are taken, to share in the administration of criminal justice. This argument has no application to grand jurors at quarter sessions; for they are taken from the very class who compose the petit jury. As I have already stated, there is no well defined legal qualification for grand jurors at the assizes. There is, however, a qualification required for grand jurors at quarter sessions and it is the same as that for petty jurors at the assizes. There is nothing more urgently needed and more loudly called for in our law than greater simplicity, more conformity, and less of arbitrary distinction, in the methods of procedure. Should the grand jurors at quarter sessions be abolished, it is not likely that those at the assizes can long continue their functions in criminal cases. The preliminary enquiry before the grand jury having been found to be superfluous in the one case, can hardly, with any show of reason, be retained in the other.

But I think that the question cannot be determined on an issue like this. The direct and immediate effect of the interposition of the enquiry before the grand jury must, necessarily, be either useful and conducive to the ends of justice, or be merely nugatory, or else mischievous. If it be immediately useful or directly conducive to the ends of justice let its advocates meet us in this ground, and shew us that it is so. If they accomplish this, there is no need for them to go further—they have already established their point. But if they are defeated upon this ground—if it be shewn that those immediate and direct results are nil or mischievous—surely it is little

short of an insult to the class whose co-operation is desired, to suggest that an institution, shown to be idle or harmful, should be retained merely for the purpose that that class should be engaged in working it. I do not think that the elevated and enlightened body from which grand jurors at the assizes are selected, is likely long to care to exercise functions which have become almost a mere form and which may perhaps work mischief.

In conclusion it is right to note that, with all its faults, the system of sending bills of indictment before grand juries does much less mischief than might be reasonably expected. This probably is to be accounted for by the circumstance that the enquiry before the grand jury has become little more than a mere form. However, idle forms are the things of all others which men now are impatient of in legal procedure. It is no great effort of prophecy to predict that the attacks which have already been made in parliament on this ancient institution will be renewed on a more extensive scale than has yet been attempted. And one feels inclined to add that, when such attacks shall be made, no one who regards our legal system in an enlightened spirit will desire to raise a finger in defence of the "functions of grand juries in criminal cases."

VIII.—*Proceedings of the Statistical and Social Inquiry Society of Ireland.*

EIGHTEENTH SESSION.—FIFTH MEETING.

[Tuesday, 21st February, 1865.]

The Society met at 35, Molesworth-street, Jonathan Pim, Esq., V.P., in the chair.

Dr. Shaw, F.T.C.D., read a paper entitled "English Schools and Irish Masters."

E. D. Mapother, M.D., read a paper on "The Difference between the Statutes bearing on Public Health for England and Ireland."

The ballot having been examined, the following gentlemen were declared duly elected members of the Society:—John P. Byrne, Esq., J.P.; John Simon Carroll, Esq.; Alexander W. Hodges, Esq.; James A. Mowatt, Esq.; The Solicitor-General for Ireland (Edward Sullivan, Esq.); Erwin Harvey Wadge, Esq.

SIXTH MEETING.

[Tuesday, 25th April, 1865.]

The Society met at 35, Molesworth-street, Professor Ingram, F.T.C.D., V.P., in the chair.

Professor Houston read a paper on "The Strike and Lock-out in the Iron Trade."

Dr. Hancock read a paper on "Strikes with respect to hours of labour considered."

The ballot having been examined, the following gentleman was declared a duly elected member of the Society :—Henry Maclean, Esq., T.C.

SEVENTH MEETING.

[Tuesday, 16th May, 1865.]

The Society met at 35, Molesworth-street, Right Hon. the Attorney-General, V.P., in the chair.

Mr. Constantine Molloy read a paper on "The Acts relating to the Constitution of Juries in Ireland."

Mr. Mark S. O'Shaughnessy read a paper on "The Venue for Trials, civil and criminal."

EIGHTH (AND CONCLUDING) MEETING.

[Tuesday Evening, 20th June, 1865.]

The Society met at 35, Molesworth-street, Sir Robert Kane, V.P., in the chair.

Mr. Arthur P. Cleary read a paper on "The Organization of Industry with a view to Cheap Production."

Mr. James H. Monahan read a paper on "The Functions of Grand Juries in Criminal Cases."

In accordance with Rule IV. Cap. 4, the election of the Council for the ensuing Session, 1865–'66, was held, and Mr. Charles H. Foot and Mr. Constantine Molloy having reported as Scrutineers of the Ballot, the following were declared elected :—

D. C. Heron, Esq., Q.C., LL.D.	Professor A. Houston, LL.D.
John Lentaigne, D.L.	Professor John E. Cairnes, A.M.
E. D. Mapother, M.D.	James H. Monahan, Esq.
David Ross, Esq., LL.B.	Charles E. Bagot, Esq.
Geo. F. Shaw, LL.D., F.T.C.D.	Henry Dix Hutton, Esq., LL.B.
James McDonnell, Esq.	Robert McDonnell, M.D.

STATISTICAL AND SOCIAL INQUIRY

Society of Ireland.

THE object of the Society is the promotion of the study of Statistics, Jurisprudence, and Social and Economic Science. The meetings are held in each month, from November to June, inclusive, at 8 P.M. The business is divided into the following departments :—

I. Jurisprudence and the Amendment of the Law, including the subjects of the Punishment and Reformation of Criminals ;

II. Social Science, including Education ; and Political Economy, including the principles of Trade and Commerce ;

III. Public Health and Sanitary Reform ;

and is transacted by members reading at the meetings of the Society written communications, in the discussion of the same, and the publication of the proceedings in such form as the Council may approve.

No communication is read unless the Secretaries, or two of them, certify that they consider it in accordance with the rules and objects of the Society. The reading of each paper, unless by express permission of the Council previously obtained, is limited to *half an hour*.

Any communication intended to be read to the Society, should be sent to one of the Honorary Secretaries, at least one week before the days of Council meetings.

Proposals of candidate members should be sent to the Secretaries at least a *fortnight* before the meeting.

The subscription to the Society is *one pound* per annum, for *members*. Ladies, and any other persons resident beyond fifteen miles from Dublin, are admissible as *associates* at a subscription of *ten shillings*.

All communications to be addressed to the *Honorary Secretaries*,

W. NEILSON HANCOCK, LL.D.,
64, Upper Gardiner-street ;

MARK S. O'SHAUGHNESSY, ESQ.,
34, Summer-hill ;

EDWARD GIBSON, ESQ.,
20, Upper Pembroke-street.

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